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ABSTRACT

This publication is a comprehensive record of testimony and exhibits presented to the subcommittee on Elementary, Secondary, and Vocational Education of the U.S. House of Representatives during a hearing held October 9, 1975 on the subject of suspensions of children from school. Most of the testimony focused on discussion of a memorandum sent by the Department of Health, Education, and Welfare to state education agencies and local school districts requiring that certain procedures be followed when school officials seek to suspend students. Major witnesses presenting testimony at the hearing included Martin H. Gerry, Deputy Directory of the Office for Civil Rights; John C. Pittinger, Secretary of Education for Pennsylvania; Marian W. Edelman, of the Children's Defense Fund; August W. Steinhilber, of the National School Boards Association; and Beatrice Gustafson, Coordinator of Pupil Serivces for the Fairfax County (Virginia) Public Schools. Testimony and exhibits are presented chronologically and indexed alphabetically by witnesses' names. (JG)

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STUDENT SUSPENSIONS

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HEARING

BEFORE THE

SUBCOMMITTEE ON ELEMENTARY, SECONDARY,
AND VOCATIONAL EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, D.C.
OCTOBER 9, 1975

Printed for the use of the Committee on Education and Labor

CARL D. PERKINS, *Chairman*

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STUDENT SUSPENSIONS

THURSDAY, OCTOBER 9, 1975

House of Representatives,
Subcommittee on Elementary, Secondary
and Vocational Education of the
Committee on Education and Labor,
Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to call, in room 2175, Rayburn House Office Building, Hon. Carl D. Perkins (chairman of the committee) presiding.

Members present: Representatives Perkins, Chisholm, Mottl, Miller, Quie, Buchanan, Goodling, and Jeffords.

Staff members present: John F. Jennings, majority counsel, and Christopher Cross, senior education consultant.

Chairman Perkins. The Subcommittee on Elementary, Secondary and Vocational Education is conducting a hearing today on the subject of suspensions of children from school.

We will hear testimony first from representatives of the Office of Civil Rights in the Department of Health, Education, and Welfare. The Department has recently sent a memorandum to State education agencies and to local school districts requiring that certain procedures be followed when school officials seek to suspend students.

We would like the Department to give us its reasons for issuing this memorandum. We would also like the Department to explain to us the legal basis for the memorandum and to describe the process by which it reached the decision to issue this memorandum.

We will then hear from Mr. John Pittinger, the Secretary of Education for the State of Pennsylvania. Mr. Pittinger will be speaking for the Chief State School Officers of the country.

Next we will hear from Ms. Marian Edelman of the Children's Defense Fund concerning the fund's recently issued report entitled "School Suspensions: Are They Helpful?" That report sets out evidence gathered by the Defense Fund that suspensions are being used as a disciplinary device in a number of school districts in a manner which harms the education of many youngsters. We would also like Ms. Edelman to comment upon HEW's memorandum on suspensions.

Finally, we will hear from the American Association of School Administrators and the National School Boards Association concerning their objections to the Department's memorandum.

The House goes in session at 10. We urge, therefore, that all witnesses place their statements in the record and summarize their testimony.

Our first witness this morning is Mr. Martin Gerry, Deputy Director of the Office of Civil Rights, accompanied by Richard Hastings, Albert Hamlin and Dr. Lloyd Henderson. Go ahead.

STATEMENT OF MARTIN H. GERRY, DEPUTY DIRECTOR, OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY RICHARD A. HASTINGS, DEPUTY ASSISTANT SECRETARY FOR LEGISLATION; DR. LLOYD R. HENDERSON, DIRECTOR, ELEMENTARY AND SECONDARY EDUCATION DIVISION, OFFICE FOR CIVIL RIGHTS; AND ALBERT T. HAMLIN, DEPUTY ASSISTANT GENERAL COUNSEL FOR CIVIL RIGHTS

Mr. GERRY. Thank you, Mr. Chairman. I would like to read a statement which I have prepared.

Mr. Chairman and members of the subcommittee, we appreciate this opportunity to testify on the memorandum which the Office for Civil Rights recently issued to Chief State School Officers on the subject of student discipline procedures and actions.

The memorandum outlines the data and records which elementary and secondary public school systems should compile and maintain pursuant to title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972.

The information needs stipulated in the memorandum may be summarized as follows: State statutes and administrative rules and directives; written school district policies, the criteria used to determine such policies, and the means of dissemination to school staff, parents and/or students; an annual accounting of certain specified discipline actions, with the racial/ethnic designation and sex of each affected student, the school attended, a description of the offense or offenses, and other particulars; a log or written record of any formal or informal hearing related to specified discipline actions; a record of student withdrawals or dropouts and the reasons therefor; and a log of referrals of discipline cases to the courts or to juvenile authorities. The memorandum spells out the entries that should be made to complete each of these categories of subject matter.

As you know, title VI of the Civil Rights Act of 1964 prohibits discrimination as to race, color and national origin in federally assisted programs and activities, including those of public school systems. Title IX of the Education Amendments of 1972 prohibits, with certain exceptions, sex discrimination in federally assisted education programs.

The recordkeeping standards outlined in the memorandum represent an effort by the Office for Civil Rights to come to grips with what appears to be a serious national problem—discrimination in the application of school discipline. It goes without saying that neither the school districts, nor the Office for Civil Rights, will be able to evaluate compliance and make further inquiry into possible problem areas unless pertinent records are maintained.

Historically, concern about school discipline procedures first arose in the context of increased school desegregation, which reached a high point in the 17 Southern and border States during the school years 1970–71 and 1971–72. Based on field visits, various civil rights organizations alleged that desegregating school systems were discriminating against black students in applying discipline. Regional offices of the Office for Civil Rights, which were responsible for monitoring the implementation of HEW-approved desegregation plans, also received such reports while conducting onsite reviews. And, in enacting the Emergency School Aid Act of 1972, the Congress, as reflected in the legislative history, expressed concern about testimony of discriminatory expulsions and suspensions.

As a result, during the past few years the Department and the Office for Civil Rights have taken a number of specific steps to gather reliable information on the dimension of the problem, to investigate and correct abuses and to encourage nondiscriminatory discipline procedures.

In keeping with the Emergency School Aid Act's prohibition against various manifestations of so-called in-school discrimination, the departmental regulation provides, in part that no local educational agency shall be eligible for grants if it has had or maintained in effect a policy or procedure that imposes "disciplinary sanctions, including expulsion, suspension, or corporal or other punishment, in a manner which discriminates against minority group children on the basis of race, color, or national origin." (45 CFR sec. 185.43(d) (4)). A similar regulatory provision was in force under the preexisting emergency school assistance program.

In 1972 the Office included, in the annual school enrollment survey, a question pertaining to the number of students suspended and expelled from school. Such data was also collected in 1973. In brief, the 1973 figures, covering 2,908 school systems, reveal that the frequency of expulsions and suspensions of black, Spanish-surnamed, Asian American and native American Indian students is nearly twice that of white students.

Now with respect to school districts which evidence such significant disparities, there can be only two possible explanations: either minority students are more disruptive than their white counterparts, or minority students are being discriminated against.

Of course the frequency data, standing alone, do not constitute a finding of discrimination.

It does seem to us, however, that the prevailing disproportion raises serious compliance questions, and these questions warrant attention by an office such as ours which is responsible for enforcing Federal nondiscrimination requirements.

During the past few years, several private studies have served, in effect, to confirm our view that school disciplinary practices and the legal implications under title VI should be examined as part of the Office's annual compliance activity. The publications to which I refer are: "The Student Pushout, Victim of Continued Resistance to Desegregation," issued by the Robert F. Kennedy Memorial and the Southern Regional Council; "Children Out of School in America," published by the Children's Defense Fund; and most recently "School Suspensions," also issued by the Children's Defense Fund.

Finally, on the basis of the survey data, it was our judgment that a series of initial onsite compliance reviews should be undertaken of a number of school districts to gain an in-depth understanding of discipline procedures and to ascertain compliance with title VI. Accordingly, in fiscal year 1975, the Office proceeded to review discipline practices in the school districts of Richland County No. 1 in Columbia, S.C.; Akron, Ohio; Nacogdoches, Tex.; and Anne Arundel County, Md. In three of the four cases, the reviews have been completed and findings have been submitted to the districts with recommendations for corrective action where appropriate. In addition, the office evaluated discipline practices in numerous districts that applied for and received emergency school aid grants.

The memorandum issued by the Office in August constitutes, therefor, a further step in the evolution of a carefully thought-out compliance program dealing with this single issue of school discipline. It reflects what we have learned about the factors and processes likely to result in unlawful discrimination, and if the information recorded indicates unequal treatment, it will help alert both the school districts and the Office to the need for corrective action.

It should be pointed out that the recordkeeping requirements are intended, among other purposes, as a means of deterring discrimination and encouraging voluntary remedial action.

As indicated earlier, school districts are obligated under title VI to operate their federally assisted programs without discrimination. Such an obligation assumes, in the first instance, some degree of wherewithal in the sense that the recipient of funds has been provided with clear-cut standards to apply and has certain key facts at hand with which to assess compliance. We believe it is the job of the compliance agency to see that these instruments are made available. It is certainly not in anyone's interest, least of all that of school principals and superintendents, to leave the basic legal expectations in a state of obscurity. And, as a practical matter, the Office must work within resource limitations and must enforce simultaneously other statutes and authorities with respect to other institutions. This means that if the nondiscrimination laws are to be effective, we must to a considerable extent rely on universally applicable standards that will promote self-correction and facilitate compliance determinations in individual cases.

Second, in regard to the memorandum, it has been our experience that most of the information pertaining to this subject matter is difficult, and in some instances virtually impossible to recreate if the schools do not maintain it on a current basis. And, when a review is initiated of a school district whose records are complete or nonexistent, necessitating retrospective compilations, meeting our request for various kinds of information is apt to prove more burdensome than if the information had been routinely kept up to date.

Third, we are aware that many school systems, independently or pursuant to State policy, already maintain most or all of the information indicated in the memorandum. In light of judicial developments, and in particular the Supreme Court's decision in *Goss* v. *Lopez*,[1] it is in the school district's own interest to maintain most, if not all of, this data.

Mr. Chairman, in order to provide the subcommittee with an understanding of the rationale, my statement has focused on the historical sequence and the considerations that led the Office to formulate and issue a data maintenance requirement in this area.

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[1] 419 U.S. 565 (Jan. 22, 1965).

We do recognize, however, that certain problems have arisen in connection with the memorandum and the Office is considering a number of modifications.

First, the memorandum was not published until late summer, a time when school systems had already completed preparations for the new school year. Accordingly, the time frame for recordkeeping imposed by the memorandum may provide districts with insufficient time to make the necessary arrangements.

Second, despite our efforts to be precise in defining the requirements, school officials have experienced difficulty in relating their student discipline procedures to the specifics of the memorandum. In addition, the racial/ethnic designations set forth in the memorandum have been superseded.

Third, some confusion has arisen with respect to the format or formats in which school systems have been required to maintain the specified information.

Finally, questions have been raised as to whether the request to local districts for data maintenance could have been limited to some relevant sampling.

Since the memorandum was issued, the Office has met with representatives of the Council of Chief State School Officers to discuss these and other related issues. We made it clear at the time that any system that reliably records the basic type of information described in the memorandum may continue to be used. For instance, a statewide approach to satisfying the requirement is entirely feasible.

We are in the process of examining various options that might help to alleviate the concerns that have been expressed. In this regard, we welcome this hearing and would be pleased to discuss any suggestions or comments the subcommittee may wish to make in regard to the memorandum.

Thank you.

[Memorandum for Chief State School Officers follows:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., August 1975.

Memorandum for Chief State School Officers
Subject: Record Keeping on Student-Discipline Procedures and Actions in School Districts.

The Office for Civil Rights has recently reviewed and analyzed certain data on student discipline actions, which have been submitted on the Annual Civil Rights Survey Forms OS/CR 101 and 102 by recipient school districts. This data shows that, in many hundreds of school systems throughout the Nation, minority children are receiving a disproportionate number of discipline actions in the form of expulsions and suspensions and are being suspended for longer periods than nonminority children.

The Elementary and Secondary Education Division of the Office is now undertaking a program to ascertain compliance with civil rights statutes in school systems where there appear to be possible violations in the administration of student-discipline actions. In the course of the program, this Office will require school districts to furnish a number of documents relating to student discipline actions and procedures to serve as a basis for a preliminary determination of possible violations of these statutes.

Title VI of the Civil Rights Act of 1964 and the Department Regulation 45 CFR (Part 80) promulgated thereunder require that there be no discrimination on the basis of race, color, or national origin in the operation of any federally assisted programs. Section 80.6(b) of this Regulation provides: Each recipient shall

keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs.

Similarly, Title IX of the Education Amendments of 1972 states in Section 901(a): No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . .

The purpose of this memorandum is to request Chief State School Officers and their staff to inform their constituent school systems of the necessity to keep and retain complete records of student disciplinary actions and procedures. Although most school systems keep records on these matters already, we believe it would be of benefit to all school administrators to learn of the nature of the information this Office expects school systems to maintain. School districts are expected to retain all records regarding student disciplinary actions for at least the past two school years. Beginning with the 1975–76 school year, the Office for Civil Rights requests that all school systems receiving Federal financial assistance maintain the following kinds of documents.

State statutes pertaining to student discipline, including regulations or by-laws issued by the State Board of Education.

Written statements issued by the Board of Education, the Superintendent of Schools, school principals, teachers, or other agents of the Board regarding school policies, standards, practices, and procedures for the discipline of students including, but not limited to, by-laws, handbooks, notices, memoranda or logs. The criteria and procedures used to develop these written statements should be explained as well as the means by which they were communicated or disseminated to school staff, parents, and/or students.

An accounting of the numbers of students subject to disciplinary actions as described below starting with the school year 1975–76. This accounting should contain an entry for each student subject to disciplinary action as described below, the racial/ethnic designation and sex of the student, the school attended, a description of the offense or offenses for which disciplined, the title of the person or persons reporting the offense, the title of the person or persons imposing the action or actions, and a concise procedural history leading to the disciplinary action or actions from the initial reporting of the offense through final disposition of the case. The accounting should indicate which alternatives to the disciplinary action, if any, were considered prior to the imposition of the disciplinary action.

A log or logs of any formal or informal hearing related to disciplinary actions by the Board of Education, the superintendent of schools, school principals or other designees of the superintendent. Entries should include, but not be limited to, the racial/ethnic designation and sex of the student, the school attended, the nature of the offense or offenses, the form of notice given to the student, the hearing authorities, whether or not the hearing preceded removal from school, explanation of necessity for removal from school prior to hearing and the time elapsed, a description of the testimony offered, the findings, and the disposition of the case.

The kinds of disciplinary actions for which entries should be kept would include, but not be limited to, (1) expulsion, (2) suspension reported by number of school days, (3) corporal punishment, (4) referral to special classes or schools for behavioral modification, and (5) transfer to another class or school.

An accounting of student withdrawals from school (dropouts), containing an entry for each student who withdraws, the school attended, the ethnic designation and sex of the student, and the reason for withdrawal.

A log of referrals of discipline cases to courts or to juvenile authorities. Entries should include a description of the offense or offenses, the ethnic designation and sex of the student, the school attended, and the disposition of the case.

For the purposes of these records, ethnic designation should include these groups:

American Indian.—Persons considered by themselves, by the school, or by the community to be of American Indian origin.

Black American.—Persons considered by themselves, by the school, or by the community to be Black or of African or Negro origin.

Asian American.—Persons considered by themselves, by the school, or by the community to be of Chinese, Japanese, or other Asian origin.

Spanish Surnamed American.—Persons considered by themselves, by the school, or by the community to be of Mexican, Puerto Rican, Central-American, Cuban, Latin-American, or other Spanish origin.

Other.—All individuals not included in the foregoing categories.

This Office appreciates the cooperation of the Chief State School Officer in advising their constituent school systems of these requirements under law. As a supplementary action to advise constituent school systems of these record-keeping requirements, this Office will provide local education agencies with a copy of this memorandum. Questions regarding the keeping of records on student disciplinary action should be addressed to: Dr. Lloyd R. Henderson, Director, Elementary and Secondary Eucation Division, Office for Civil Rights, Department of Health, Education, and Welfare, Washington, D.C. 20201, Telephone: Area Code 202 245-6118.

MARTIN H. GERRY,
Acting Director, Office for Civil Rights.

Chairman PERKINS. Let me ask you a question. Has the Office of Civil Rights ever issued a memorandum like this before? If I am correct this memorandum is the first that your office has ever sent to every school district in the country.

Mr. GERRY. Mr. Chairman, that is correct with respect to a memorandum detailing specific types of data that are to be maintained by local school districts.

I would add that we have for several years required school systems to collect and submit data bearing on faculty and students. In some survey years 8,000 school systems have been subject to reporting requirements.

Chairman PERKINS. Before you issued the memorandum, just who did you consult in HEW and other people in general?

Mr. GERRY. Mr. Chairman, before issuing our memorandum we, of course, discussed its content within HEW, including the Office of Education. We did not discuss it with—and I have to admit we were in error as a result of this oversight—a sufficient number of outside groups to elicit the varied perspectives and concerns of State and local school officials.

We relied on—inadvertently, I think—an internal process of discussion which I don't think has adequately brought some of those concerns to our attention.

Chairman PERKINS. Mrs. Chisholm?

Mrs. CHISHOLM. Thank you very much, Mr. Chairman.

I have two very basic questions. I am deeply concerned about this disproportionate suspension of minority students. I have been very much involved in New York City with large numbers of black and Spanish-speaking students being eliminated from the school system and not necessarily because of discipline reasons but because of a kind of insensitivity and a kind of preconceived attitude on the part of teachers who do not understand and do not recognize the difference in cultural patterns.

There are two basic questions I want to ask. As I am sure you are aware enforcement studies in a number of school districts across the country indicate that suspensions and other disciplinary actions affect black children at a percentage far beyond their representation in the school population.

While I can understand your desire to avoid unnecessary administrative procedures and paperwork how are we to evaluate and understand these incredible percentages of disciplinary action against these students without the recordkeeping that is now required by the Office of Civil Rights? How are we going to be able to handle this?

Mr. GERRY. I think, Mrs. Chisholm, that is exactly right. I don't think that we can eliminate a separate recordkeeping requirement. The office is very interested in being as reasonable and as flexible as possible in permitting variations in the formats in which records are kept and also regarding the time frames of implementing what may well be a cumbersome procedure for some school districts. But I would agree that without the maintenance of basic records it would be virtually impossible for the office to conduct an effective student discipline compliance program. I think it also would be difficult for local public officials, school board members, state officials, to adequately assess the reasons for this extraordinarily large difference in suspensions.

Mrs. CHISHOLM. One last question. It would appear from the numbers of students being suspended across the country that such action has become almost a standard and routine technique for dealing with what teachers and administrators consider troublesome students.

It appears that students may be troublesome in the eyes of teachers and administrators because of what they wear or their facial expressions. I know that from situations in New York City. School discipline has become more than dealing with students who are violent or who cause actual disruption of the educational process.

My question is how can teachers and administrators who find time to notice and react to student apparel, facial expressions, and something vaguely called a poor attitude, fairly complain at the same time that they are just too busy to comply with Federal recordkeeping requirements about the disciplinary activities?

I can talk about that. School districts in Brooklyn find plenty of time to really come to some conclusions with respect to students that they are unable to cope with because of their own inadequacies and deficiencies. Yet they complain it is too burdensome to keep all these records. How do you reconcile these two things?

Mr. GERRY. I think the basic requirement of maintaining data related to school discipline procedures and actions, while imposing some administrative burdens, is not unreasonable. I think at this point it is virtually necessitated by constitutional standards, in addition to HEW's civil rights compliance requirements.

Our specific concern is that in the maintenance of these records sufficient attention be paid to keeping data in a manner that can facilitate and ultimately ease burdens on local school officials when complaint or compliance reviews are undertaken.

Our experience has been that there is nothing as burdensome on a school district as trying to recreate circumstances and events at a later date because records were incomplete or nonexistent.

If there are not adequate records the way to get that information is often to interview people who then try to recall what happened during some time span. It is a wasteful process. However, I note again that I think there have been some very legitimate concerns raised in a meeting with the Chief State School Officers about some of the items in the memorandum.

As I responded to the chairman's question earlier, I think the office should have spent more time in defining requirements more precisely and thereby reducing difficulties of school officials in relating their discipline procedures to the specifics of the memorandum.

Mrs. **Chisholm.** Thank you, Mr. Chairman.

Chairman **Perkins.** Mr. Buchanan?

Mr. **Buchanan.** Mr. Chairman, I will pass. No questions.

Chairman **Perkins.** Mr. Goodling, you are next in seniority.

Mr. **Goodling.** I suppose my first question would be do you people ever go out into school systems and spend any time there? Or do you just read reports and studies, et cetera, which anybody can do and make them say whatever they want them to say?

Mr. **Gerry.** Mr. Goodling, the office has committed over the last two years a significant amount of staff resources in school districts, considering the question of discipline and discrimination in discipline.

Mr. **Goodling.** I couldn't believe this memorandum you sent out. In fact I wrote a letter to the Secretary of HEW saying that I am sure, being an educator himself, he certainly didn't see this before it went out or he certainly would have tried to do something about it.

At the present time you are asking administrators, teachers, guidance counselors, to fill out form after form after form after form, which really gives you very little time to do the guidance work you should be doing. So many times it is redundant. For instance, I resent the fact that you want to know the ethnic designation, American Indian, black American, Asian American, Spanish-surnamed. Where do we get that kind of information? I had to fill out those forms year after year. We don't ask students those questions.

I did a little survey one time with the elementary clerks asking them to designate in their estimation who we had that fit some of these categories. Had I ever released that I would have had a revolution on my hands. Where do we get that kind of information?

After you call the office and you say "We have got to have this information," they say "Put down whatever you want." And when you won't accept that we give you any figure that you might want to hear.

If you are out on the firing line day after day after day you find out certain things. First of all sometimes the only contact you can ever get with a parent is a suspension. You can telephone. You can write. You can do everything under the sun. But the only contact sometimes you will get with a parent is a suspension because until that time they will ignore you completely.

I have dealt with schools in Pittsburgh and Harrisburg and in many rural schools. I just have not seen this type of discrimination through discipline that you are talking about. The discipline problems come according to the home situation in most instances. Sometimes you have got to make an example of a few because of the majority that you are trying to work with in the school system.

I just don't understand. You make a statement here that by keeping these records it is going to be a means of deterring discrimination and encouraging voluntary remedial action. We have some poor administrators and some poor teachers probably on an equal basis with the amount of poor legislators that we might have. The only difference is the voters can vote out the legislators and in most instances the teachers cannot be voted out.

I don't see how you think that an additional bed of recordkeeping which is going to antagonize the administrator, the teacher and so on, is going to bring about any deterrent as far as discrimination in suspending or disciplining. I think disciplinary action is totally based 9 times out of 10 on the youngster and how the youngester reacts and what kind of a home situation the youngster came from.

If you take away this little bit of time that the superintendent or principal gets to offer guidance to these youngsters because they have more forms to fill out it seems to me that we are going to have even greater difficulty.

My policy always was I listened to the student the first time. The student listened to me the second time. The third time there is going to be some kind of action. Either the paddle is going to swing or someone is going to be suspended or there is going to be some other kind of punishment. I think basically most people try to do that with a few exceptions. As in every other walk of life we have people who probably shouldn't be in the profession.

I would be interested in knowing how you feel that the additional recordkeeping is going to reduce the amount of what you feel is discrimination in offering some kind of help to a student who has gone beyond the point.

Mr. Gerry. I might answer some of those concerns. First the maintenance by public school systems of racial/ethnic information has occurred over the last 7 or 8 years. It may have extended even earlier.

Mr. Goodling. And normally filled out in the way I filled it out because there is no way you can tell those things that you are asking for.

Mr. Gerry. There is no question, Congressman, that there is primary reliance on good faith efforts of school personnel in completing survey forms. There is not an insistence or even an implication that other methods such as asking students what their racial or ethnic identity is or other methods that would I think improperly interfere with school activities are to be used.

There is without question a reliance on the good faith efforts of school personnel.

Mr. Goodling. We are not allowed to ask that kind of information.

Mr. Gerry. If you are talking about state law I am sure that in many cases this is not permitted. I think the practices for the Office has been following are the most reasonable compromises for getting as accurate data as is possible without invading the privacy of individuals or making inquiry of matters which they may not wish to discuss.

The point is that many States have maintained this data for many years apart from any Federal requirements. I think New York has maintained such data as part of its basic educational data system for several years. The State's efforts in this regard relate to the concerns it shares with this Office—patterns of behavior and practices—that certainly do not in and of themselves indict any school system but which may raise serious compliance questions.

I would point out that the memorandum, which was issued in August, does not require submission of any data to the Federal Government.

It concerns recordkeeping requirements. It is very general with respect to the formats for maintaining specific information. Where it becomes precise is in the nature of the information which will be necessary in conducting a compliance review. But it is quite general with respect to the way information should be collected or how it should be stored.

This is an attempt to accommodate the variety of mechanisms which State and local school districts have developed to accomplish essentially the same purpose—the maintenance of what the Supreme Court has determined to be in most cases essential data with respect to the due process requirement of the 14th amendment.

I think it would be unfair for me not to mention that many of the items in the memorandum and much of its structuring directly reflect the Supreme Court's decision in *Goss* v. *Lopez*, decided earlier this year. The Office realized that many school systems would be redesigning their recordkeeping systems because of the Supreme Court decision. We felt it would be most helpful and to issue recordkeeping requirements now rather than waiting for a school system to set up recordkeeping systems from the constitutional due process standard and then come in 2 or 3 years later with an additional set of Federal requirements.

I think the process of consultation that we are involved in right, now, and I regret that it didn't begin earlier, will lead us to clarify the memorandum so that it will accommodate the flexibility required by many school systems. At the same time we want to preserve the basic due process requirement which the State and local school districts are wrestling with anyway and our need for certain types of racial and sex information.

Mr. GOODLING. I have no other questions.

Mrs. CHISHOLM. Thank you very much, Mr. Goodling.

Just one comment I would like to make and that is I can understand what my good friend Mr. Goodling is saying. But I think we can actually draw an analogy with civil rights legislation in this country when so many persons are speaking about States' rights, yet the Federal Government established some basic guidelines to protect the rights of everybody in this country and if they had not we would not have moved ahead as fast as we have in the South with respect to the voting rights of people as a basic part of our Constitution.

I think we do have to recognize as Mr. Goodling has said that perhaps many school officers and many school administrators might have very definite negative feelings about all of this recordkeeping. It might actually become cumbersome and burdensome. But at the same time the very fact that records have to be kept, places everybody in the position to be more careful as to what they are going to do with respect to this basic problem which is rising disproportionately in this Nation today with the suspension of children, denying young children the basic education which would enable them to function in a highly automated and technological society.

We know legislation doesn't change morality. Legislation doesn't change attitudes. It just creates the milieu to protect those who are powerless without protection from the Federal Government. I want to inject that.

Mr. GOODLING. May I react?

Mrs. CHISHOLM. Yes, Mr. Goodling.

Mr. GOODLING. I agree of course with most of what Mrs. Chisholm has said. My concern is this. We make generalizations and then we try to make quite a case out of it. For instance in the last school district from which I came you could safely say there were more suspensions among the Paradise students than among the other students. The students from Paradise Protectory were sent there in the first place by the courts. There is no question that there was more disruption from those youngsters proportionate to the rest of the youngsters in the school. I think we just have to be careful when we make generalizations in relationship to who is being suspended.

I should also point out that there is a difference between a suspension and an expulsion. That is very important. Many times a suspension denies very little. In fact we are at the point where if you suspend you are really educating them anyway. It is less convenient for the school to do it the way it is being done when they are suspended as a matter of fact.

My concern is that we sometimes make generalizations and then try to make a case out of those generalizations.

You and I had better go and vote.

Mrs. CHISHOLM. I am not going right now.

Thank you very much. Mr. Goodling.

Chairman PERKINS. Are there any further questions?

Mrs. CHISHOLM. I have no further questions.

Mr. CROSS. Mr. Gerry, could you explain to me why the August memorandum was not published as a regulation and therefore open to public comment?

Mr. GERRY. The memorandum of course was an attempt to outline a set of recordkeeping requirements pursuant to the provisions of 45 CFR 80.6(b), which vests in the Director the authority to require from time to time the keeping of pertinent records.

Mr. Hamlin might want to elaborate on that.

Chairman PERKINS. Go ahead. I am going to ask you gentlemen to put your statements in the record anyway.

Mr. HAMLIN. I don't think there needs to be any more elaboration of that. The regulation is found at 45 CFR part 80. The section 80.6 of the regulation already requires recordkeeping. This memorandum is only to clarify that section of the regulation in explicit areas concerning discipline.

Mr. CROSS. Do you think it might have been received in a more favorable fashion if it had been published as a regulation and open to comment?

Mr. HAMLIN. It is not a regulation. To publish it as a regulation might be contrary to almost every legal aspect.

Mr. CROSS. However, legally districts would be required to comply just as they do with a regulation. Is that correct?

Mr. HAMLIN. Legally districts are already required by the regulation to keep such reports as are designated as pertinent by the Director.

Mr. CROSS. Did you examine the relationship between this memo and the requirements of the Buckley amendment regarding student files?

Mr. HAMLIN. That was taken into consideration; yes, sir.

Mr. Cross. Was there any written explanation of how these two (Buckley and the OCR memo) related that might be submitted for the record?

Mr. Hamlin. We will submit that for you.

Mr. Gerry. We can submit that for the record. We carefully considered and did not find the memorandum inconsistent with the Buckley amendment.

[Committee insert follows:]

Section 438(c) of the General Education Provisions Act (hereinafter GEPA) authorizes the Secretary of HEW to promulgate regulations protecting the privacy of student records. The section states: 438(c): The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with various surveys or data-gathering activities conducted, assisted or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

However, Section 400(c)(2) of GEPA provides an express exemption for Title VI of the Civil Rights Act in the following terms: 400(c)(2): Nothing in this title shall be construed to affect the applicability of the Civil Rights Act of 1964 to any program subject to the provisions of this title.

The plain language of this section is that Title VI activities are not subject to the confidentiality provisions of the Buckley Amendments.

A careful reading of the Conference Report reveals nothing that would suggest any other interpretation. On the contrary, Mr. Richard Smith, attorney of the Senate Education subcommittee, who drafted 400(c)(2), stated in a phone conversation on October 30, 1974, that he informed the Conference Committee that the Title VI exemption was inserted to override any provisions which might inadvertently interfere with the enforcement of the Civil Rights Act of 1964. Mr. Smith's remarks are consistent with the committee report comments accompanying introduction of the Senate predecessor of 400(c)(2)[1] "The section clarifies that the Civil Rights Act of 1964 is not considered for the purposes of GEPA an applicable statute, although it shall have full force and effect with respect to the administration of any applicable program."[2]

The memorandum to Chief State School Officers regarding recordkeeping of student discipline procedures and actions of school systems was issued by the Office for Civil Rights pursuant to the authority of the Department's Title VI Regulation (45 CFR Part 80). In accordance with the Regulation, the Office for Civil Rights has not only a right but the obligation to obtain information pertinent to determining whether there has been compliance with Title VI:

80.7(a) *Periodic Compliance reviews.*—The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

Further, the Regulation imposes correlative duties on recipients of Federal financial assistance to maintain and submit compliance-related information:

80.6 *Compliance Information.*—(b) Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. . . .

(c) Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. . . . Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this Part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

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[1] S. Rep. No. 735, 93d Cong., 2d sess. (1974): S1539, sec. 400(2)(B): "The Civil Rights Act of 1964 (A) shall not be considered for purposes of this title, an applicable statute but (B) shall have full force and effect on the basis of the terms of that Act with respect to the administration of any applicable program."

[2] Senate Committee on Labor and Public Welfare, 93d Cong., 2d sess., Report on Education Amendments of 1974 at 90.

Mr. CROSS. What sort of manpower is OCR devoting to implementing this requirement?

Mr. GERRY. Dr. Henderson, do you want to address that?

I think Mr. Cross' question was essentially some estimate of the staff time that is going to be devoted to the student discipline enforcement issue.

Mr. CROSS. Yes.

Dr. HENDERSON. We will have to submit an estimated percentage of time. It is not as much as we would like because of various court orders that have been placed upon us.

Mr. GERRY. We will submit an estimate of the staff time.

[Committee insert follows:]

The Office can present an estimate of the number of professional staff days for headquarters and regional offices assigned to compliance in the area of student discipline for Fiscal Year 1976. This figure would be 493 staff days for headquarters, or six percent of the total staff days of headquarters Elementary and Secondary Education Division. For regional offices our plans propose 160 staff days for the conduct of student discipline reviews, or less than one percent of the total staff days of regional Elementary and Secondary Education offices.

Mr. GERRY. We have included the issue of discipline in the comprehensive reviews we are conducting in four large urban school systems: New York City, Chicago, Ill., Los Angeles, Calif., and Philadelphia, Pa.

We are attempting, as part of our program development effort, to consolidate many issues in these comprehensive reviews to reduce the amount of separate trips and the amount of time being spent. It is difficult, therefore, to separate the amount of time to be spent on student discipline in view of its inclusion in our comprehensive compliance reviews. It will be a part of most compliance activities that we undertake.

Mr. CROSS. On page 6 you mention that you are going to issue or you are considering a number of modifications. I believe that is the terminology you use at the bottom of page 6. Would you tell us what those modifications are and when you will issue them?

Mr. GERRY. Yes. I can discuss this matter in general terms. First, the racial and ethnic categories in the memorandum have been superseded by new designations for compliance reporting and recordkeeping requirements for this office under an agreement with other Federal agencies. It will be necessary to advise recipients of the memorandum of that change. That has been pointed out to us by many chief State school officers.

We welcome this. It is overdue for a consistent set of racial and ethnic categories across compliance agencies.

Also, at this point, we are concerned with the wording of some provisions of the memorandum. I can mention a few. Page 3 of the memorandum lists the kinds of disciplinary actions for which entries should be kept. This subject has been discussed with the Council of Chief State School Officers, specifically its Committee on Evaluation of Information Systems.

We are concerned that point 5, the transfer to another class or school, may be too broadly defined. We are considering ways whether it is feasible to separate routine and relatively nonconsequential transfers from transfers that would have a definitely disadvantaging effect on the student.

Also at this point we are convinced of a need to clarify acceptable formats. We are concerned that the memorandum has been interpreted by many people as requiring a fixed format in recording information.

The memorandum is intended to define a minimum set of data that must be maintained rather than any precise manner of maintaining the data. I think we need to make this clearer. We are doing that in our discussions.

These are the major modifications that should be mentioned. However, I should also mention the matter of timing. It is obvious that the time frame imposes an unreasonable burden in requiring school districts to make necessary arrangements in September on the basis of a memorandum issued in August.

We are seriously considering relaxing or changing the time frame to provide additional time for school districts that may need it.

I think this summarizes most of the issues that we have discussed.

Chairman PERKINS. Mr. Jeffords?

Mr. JEFFORDS. I have a couple of questions. On page 3 you quoted some rather alarming statistics. Yet I know that statistics often can be misleading. I wonder if you can tell me that, when you refer to "twice the frequency" you mean that at individual schools wherein you found there was discipline action taken there was twice the frequency for minorities percentagewise compared to whites or whether this was a national statistic which would not necessarily take into consideration differences in geographical attitudes?

Mr. GERRY. Yes, Mr. Jeffords, it is a national statistic. You are quite right. It does not suggest that in each school district there would be a 100 percent higher rate.

I would have to say fairly that looking at the data we have and also examining the report by the Children's Defense Fund, which provides much of this data, that the problem does seem to occur in various parts of the country but certainly does not occur in each school or in each school district. I don't think it is entirely a regional problem in any sense.

Mr. JEFFORDS. My other point would be that of course this would raise different possibilities than the two you suggest on page 3. It might be that in urban areas where there is considerable strife you might get a much higher percentage of suspensions than you might in rural areas without that kind of problem.

Mr. GERRY. I think the rate of suspensions might well be affected by the problem. But the disturbing part of the statistic is the fact that the rate seems to disproportionately affect black and Spanish-surnamed American students. In other words, I think it would be likely that the frequency of suspension of students as a disciplinary device might well vary in urban and rural settings or in proportion to the levels of disruption which communities experience.

But the problem is that the statistic that varies is the racial statistic on suspension rather than the overall statistic on suspensions.

Mr. JEFFORDS. You indicate on page 5 that if the information compiled as a result of the memorandum indicates unequal treatment it will signal the need for corrective action. Would you define please what you would consider as "unequal treatment?"

Mr. GERRY. Yes. Certainly the applying to minority students of a different set of standards. In other words, defining an offense in a way which defines it only for students or predominantly for students of one racial or ethnic group.

Another problem would be applying sanctions based on racial or ethnic categories. As an example the same offense resulting in a different kind of punishment. Those would be examples of unequal treatment.

We have, in some of our reviews, found evidence of this type of discrimination.

Another example would be that within the schools of a district sometimes the definition of what a disciplinary offense is may vary from school to school and schools that are predominantly minority may have a much stricter definition of a disciplinary violation than schools that are predominantly attended by white children. That, in our judgment, would be a violation if the school district does not even-handedly define the discipline code.

I would be happy if you would like to present a fuller statement and put it in the record.

Mr. JEFFORDS. What do you feel are the possibilities for corrective action?

Mr. GERRY. I think this goes to the recordkeeping requirement itself. The first thing is to identify the cause for unequal treatment.

For example, the memorandum starts off by talking about the maintenance of state statutes pertaining to student discipline. The first thing I think we would always be inquiring about is the dissemination of whatever law, State law and local policy, has been written down so that teachers, principals, students and parents have a fair opportunity to know the code of conduct.

I think some of our information and certainly the report by the Children's Defense Fund indicates that in many cases parents and students really are not aware of what constitutes an offense. This is particularly true for so-called nonviolent offenses, which predominate in the suspension area.

So I think the first thing in terms of corrective action would be to have a clearly defined set of standards that are going to be applied by the school district to everyone.

It is not our intention to tell school districts what those standards ought to be. It would be our intention however to require school districts to make it clear what they are.

The second type of thing I think would be to try to trace the causes for the particular types of errors. For example, the Supreme Court discussed this at some length in the *Goss* v. *Lopez* decision. Has there been a hearing? Has there been the presentation of any information upon which the decision is based. The Supreme Court I think clearly indicated that the failure to hold hearings of some sort or to provide people with an opportunity at least to refute charges made against them may well lead to erroneous disciplinary procedures. If we find that that is happening and particularly on a racial basis then part of the correction may be to standardize the procedure by which discipline cases are handled.

A lot of the problem, I think, Mr. Jeffords, could be solved by an open publication in the local community of the exact procedures, standards, and range of disciplinary sanctions. If you have to pursue it further it may be necessary as part of corrective action to identify persons who are not abiding by the policies and procedures that the school district has issued and we would expect local school districts would take internal administrative action to be sure that all employees in the district are complying with the formally established and published requirements. I think that is the basic type of corrective action we would be striving for.

Mr. JEFFORDS. Thank you, Mr. Chairman.

Chairman PERKINS. Mrs. Chisholm?

Mrs. CHISHOLM. No questions.

Chairman PERKINS. Mr. Goodling, any further questions?

Let me thank all of you for your appearance here today. It has been very helpful. If you have any further statements to submit for the record, without objection those statements will be included. Thank you.

Mr. GERRY. Thank you, Mr. Chairman.

Chairman PERKINS. Our next witness is Mr. John C. Pittinger, secretary of education, Pennsylvania.

Come up, Mr. Pittinger. Come right up and identify yourself for the record.

We have submitted two statements for the record.

STATEMENT OF JOHN C. PITTINGER, SECRETARY OF EDUCATION, PENNSYLVANIA, REPRESENTING THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS

Mr. PITTINGER. Thank you, Mr. Chairman. I am John C. Pittinger, secretary of education from the Commonwealth of Pennsylvania and here this morning representing the Council of Chief State School Officers, the 56 men and women in the States and territories who are responsible for administering the departments of our various jurisdictions.

We have submitted two statements for the record.

Chairman PERKINS. Without objection, those statements will be inserted in the record.

[Prepared statement of John C. Pittinger and Dr. Mark R. Shedd follows:]

STATEMENT OF JOHN C. PITTINGER, SECRETARY OF EDUCATION, REPRESENTING THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS

Thank you for the opportunity to present this testimony on behalf of the students in Pennsylvania, and for my colleagues in the Council of Chief State School Officers, of whose Legislative Committee I am Chairman.

Let me begin by making three points on the August 1975 directive from the Office of Civil Rights to the Chief State School Officers.

1. I support the basic intent of the federal directive. The protection of civil rights of students is vital. We have made substantial progress in assuring the protection of these rights. Our State Board of Education has passed regulations on student rights and responsibilities which afford a student due process before suspension or expulsion.

2. I accept the premise of the federal government that discipline is sometimes administered in racially discriminatory manner. National studies published by

the Harvard University Center for Law and Education and by the Children's Defense Fund indicate that not only are school suspensions and expulsions used to an excessive degree but also that they reflect racial bias.

3. I acknowledge that more attention is necessary to address the problem. An effort is needed to evaluate present disciplinary practices and alternatives and their efficacy with regard to all children. I do not doubt that there are solutions short of suspensions and expulsions which would be not only more desirable but also more effective. To address these concerns it will be necessary to document and evaluate current disciplinary practices. This will require data collection in the schools.

What I take exception to is the manner in which the Federal government proposes to collect this data and the excessive demands which this procedure will impose on schools in the Commonwealth. To my knowledge the federal directive requiring data from all schools in the United States was formulated without any consultation with state or local school officials.

In Pennsylvania we had no idea that such a directive was being prepared much less have an opportunity to comment on the procedures. Had we been consulted we would have suggested at the very least affording the local school districts more than a week's notice of these comprehensive data requirements. The directive was effective immediately and was received a week before school was to begin. This definitely put an unrealistic, unreasonable, and substantial burden on the local schools since no planning was possible and personnel were busy preparing to open school. There seems to be an assumption in the directive that these kinds of statistics are already being collected. This assumption may not be valid in the majority of school districts. In Pennsylvania we keep statistics, for example, as to student withdrawals, but these statistics are not broken down into racial categories. I mention this to highlight the fact that consultation with at least a few state departments and school districts would have been desirable before formulating a directive which would affect all school districts.

I would likewise question the inappropriate and impractical posture of the federal government with regard to the 16,000 local school districts. In the federal government's effort to collect data it has completely circumvented state government. I would argue that there should be an effort to coordinate efforts at the local, state and federal levels. Additionally, the procedure established is impractical and inefficient. State departments have existing mechanisms for data collection and have already collected some of the data which is now required. At the very least there should be coordination of data collection. An effort should be made to assure that whatever time the local school districts spend on this issue yields the maximum benefit. It does not make sense to burden the local school districts with several systems of data collection to comply with federal and state requirements.

I seriously question the necessity of collecting the volume of information at this time. One concern that I have is that it imposes the requirement on all schools without regard to the racial composition of that school. If the problem is racial discrimination there would seem to be no need to gather data on schools which were segregated since there would be no issue. To require all schools to keep data without examining the racial composition of that school is unreasonable. If the data collection were more closely tied to the civil rights of all students, then data requirements imposed on all schools would be more justifiable. It also appears that the Office of Civil Rights can predict with reasonable accuracy from existing data without imposing this record-keeping requirement on school districts.

I would also question that portion of the directive which mentions sex discrimination. The objective of this requirement is not clear. I feel that some articulation of the problem is necessary before implementing data collection by sex.

I would suggest that a better way to accomplish the goal of protecting the civil rights of children would be to call a moratorium on the present effort. I would suggest September 1976 as a better time to implement this data collection. This would provide an opportunity for the formulation of a more reasoned and standardized approach to the problem of documenting discriminatory disciplinary practices. It would also be more efficient in terms of local school effort. If this directive continues to be effective much time and money will be expended on a hastily devised system which might not yield the best results.

Additionally an Office of Civil Rights spokesperson has indicated to my staff that while all schools will be required to establish and maintain this data only certain "target" schools will be required to produce this data for the Office of Civil Rights this year. I would urge the Office of Civil Rights to focus in on those target schools and give the remaining schools, state education departments, and Office of Civil Rights time to formulate a more reasonable approach to the problem.

In closing I would state that we in Pennsylvania have had substantial experience in the area of school discipline and due process rights for students. We would urge the Office of Civil Rights to reconsider their directive on data collection. We would welcome the opportunity to share our experience with the Office of Civil Rights and to work with them in addressing the problems of student discipline.

PREPARED STATEMENT OF DR. MARK R. SHEDD, COMMISSIONER OF EDUCATION, STATE OF CONNECTICUT

Thank you for inviting me to submit this prepared testimony to your subcommittee.

I am Mark R. Shedd, Commissioner of Education for the State of Connecticut. I represent the Connecticut State Board of Education and the Council of Chief State School Officers, a national organization made up of the top education officials in the 50 states and five territories.

The Council works closely with the National Center for Educational Statistics, the National Institute of Education, and other federal agencies to help coordinate efforts to meet federal information needs without undue burden of time and expense on state and local education agencies.

CCSSO firmly believes that all children and young people in our society must receive fair and equal treatment in school. We need to learn more about the treatment of minority group children in school disciplinary actions and to know whether they are treated fairly in such actions, including suspensions and expulsions from school.

We believe that is the intent of the Office of Civil Rights data requirements, and we support that intent.

However, state and local education agencies are totally unprepared to supply all the data required by the August 1975 OCR memo.

Furthermore, we do not believe that all data mentioned in the memo are needed in order to satisfy the intent.

The OCR memorandum requires the following information:

State laws and state board of education regulations or bylaws dealing with student discipline. (This we can supply without great difficulty and in a matter of weeks.)

Written statements issued by local boards of education, superintendents, principals, teachers, or other board agents on school policies, standards, practices, and procedures for student discipline. These statements would include, but not be limited to, by-laws, handbooks, notices, memoranda, or logs. The criteria and procedures followed in developing these written statements are to be explained, as are the means by which they were communicated or disseminated to school staff, parents, and students. (Some of the statements referred to can be transmitted promptly. Some can be provided in a few months. Some, we believe, are unnecessary.)

An accounting of the numbers of students subjected to disciplinary actions, including such entries as: racial/ethnic designation of students; sex of students; school attended; description of offense or offenses; title of person reporting the offense or offenses; title of person imposing disciplinary action; a concise procedural history leading to the disciplinary actions from initial reporting to final disposition; and an indication of alternatives considered prior to disciplinary actions being taken. (This request needs to be scaled down drastically and provisions made to collect information on a sampling basis. Costs in time and dollars would be prohibitive if complete data were collected.)

A log of any formal or informal hearing related to disciplinary actions. Besides including a number of the same items listed in the previous paragraph, these logs should show the form of notice given to the student; whether or not the hearing preceded removal from school; and explanation of the necessity for removal from school prior to the hearing and the time elapsed; and a description of the testimony presented, the findings made, and the disposition. (This request also needs to be scaled down drastically and done on a sampling basis. If all required data were to be provided, thousands of person days would be used up in the creation of a mountain of paper work that only an army of bureaucrats could manage.)

Entries should be made on, but not be limited to such disciplinary actions as expulsion, suspension, referral to behavior modification classes, and transfer to other classes or schools. (Here again the need is for a scaling down and for a task to be conducted on a sampling basis.)

An accounting of student withdrawals from school—with entries for each student who withdraws, the school attended, the racial/ethnic designation and sex of student, and the reason for withdrawal. (Once more, this request needs further study and refinement.)

A log of referrals of discipline cases to courts or to juvenile authorities—with entries describing the offense, the racial/ethnic designation and sex of the student, the school attended, and the disposition of the case.

The OCR memorandum, as previously noted, was dated August 1975 and was addressed to chief state school officers whose cooperation was asked in advising their constituent school systems. But the memorandum closed by stating: "As a supplementary action to advise constituent school systems of these record-keeping requirements, the Office will provide local education agencies with a copy of this memorandum."

The OCR memorandum was received the last week in August with provisions scheduled to become effective the first week in September. Many local education agencies did not receive copies until after the opening of the new school year.

The OCR's attempt to deal with 16,000 school districts across the nation is clearly impractical. The memorandum is clearly unrealistic in the detail and volume of information requests.

Obviously what's needed is time for the Office of Civil Rights, state education agencies, and local education agencies to work out agreements on what's needed and how and when best to provide it.

Bear in mind that this is only one of a proliferating number of requests for information from the federal government and that it must be considered in context.

Thank you.

Mr. Pittinger. Thank you, sir. If I may I would like in the interest of time simply to summarize very briefly some of the concerns which we have.

Chairman Perkins. Go right ahead.

Mr. Pittinger. One, of course, is the question of timeliness. This document reached me on Thursday of the week before school began in Pennsylvania and it was very late in the day at that point to begin to enlighten the people in our 505 school districts about the requirements.

I should say, Mr. Chairman, at the very beginning that I do not and I don't think our organization disputes the fact that, A, discipline does get administered in a discriminatory manner from time to time and, B, that that is a legitimate Federal concern. Our question is whether this is an appropriate way to deal with it.

So timeliness was a concern, and the lack of consultation. There was no prior notice that I know of to anyone at the State or local level that a document of this kind was about to come to us, no consultation, no question about whether we were going to have any advice to give the Office of Civil Rights.

Chairman Perkins. You are telling me that no one ever contacted the Council of Chief State School Officers?

Mr. Pittinger. That is right, sir, either as an organization or individually.

Chairman Perkins. Did anyone contact your representatives here in Washington?

Mr. PITTINGER. As far as I know there was no consultation at the Washington level with the Office of Civil Rights.

Mr. GOODLING. Mr. Chairman, I would like to hear all of my Secretary's testimony and to be able to question him. How are we going to work this vote on the floor? At the same time I want to hear everything he has to say. He has come from my State.

Chairman PERKINS. Excuse me, Mr. Goodling. I should have called on you. I want to apologize for not letting you introduce your own superintendent.

Mr. GOODLING. That part is all right.

Chairman PERKINS. If you want to introduce him right now or make any remarks you want to make I will recess the subcommittee and we will come right back.

Mr. GOODLING. My only concern is that I hear all of his testimony. I would like to cast my vote. Shall we do that now?

Chairman PERKINS. Yes. Do you want to make a statement now?

Mr. GOODLING. No, he is well known throughout the country.

Chairman PERKINS. The committee will recess for 5 minutes. The first individual back nere will take the chair.

[A recess was taken.]

Mrs. CHISHOLM. The subcommittee will reconvene.

Mr. Pittinger, will you please continue?

Mr. PITTINGER. Thank you very much.

I had made, I think, two of the five points I was going to about the difficulties we have as an organization with this directive.

The third would simply be that, as in so many cases of attempts to deal directly with the roughly 16,600 school districts in the United States, there are very practical problems.

Again, had there been the kind of consultation I mentioned a few moments ago, I think it might have been possible for us to persuade the Office of Civil Rights to use the 56 States and territories in a more intelligent way in solving what we agree is a problem.

A fourth point I would make is that to some extent it seems to me that the memorandum assumes bad faith or assumes at least that States and local school districts are incompetent to deal with this problem. I don't in fact think that that is the case.

In Pennsylvania, for example, as Mr. Goodling and others know, we have been working for 3 years on a range of problems that include this and other matters and long before the Supreme Court decision in the *Lopez* case, long before this memorandum, our State board of education had adopted a regulation providing in some detail for due process in all cases of suspension and expulsion, going indeed beyond the Supreme Court's requirements in some ways, providing, for example, that a youngster cannot be suspended or expelled without making some alternative provision for his or her education.

So there are States—Pennsylvania is one; I am sure there are others—that have made, I think, a good faith effort to come to grips with this problem.

I was interested to learn just a couple of days ago, not in time to include it in my formal statement, from the Human Relations Commission of Pennsylvania that the number of complaints dealing with school problems has declined steadily for 5 years. I attribute that in part to the energetic work of the commission itself and in part to the regulations to which I have just referred.

The final point I would make is I wonder whether this regulation doesn't in fact require a good deal more detail than the nature of the problem would suggest. It applies, for example, to all districts. Yet there are districts in Pennsylvania where there are no minority children at all. It applies to many forms of discipline and it seems to me some of them, suspensions over a long period of time and expulsions, are obviously serious matters.

On the other hand there are problems of transfer of classes, problems of corporal punishment in the elementary schools, which I would think would not rise to the same level of concern.

I would say in closing these brief remarks that what really ought to happen is this. The Office of Civil Rights ought to sit down with those of us who share the concern but who have some qualms about whether this is the wisest way to deal with it and work out something that would be effective when school begins next year that would go along these lines, that would say, we would ask that by September of next year each State put before us some evidence, first of all, that there is an enforceable regulation at the State level that begins to come to grips with the more serious of these problems. And, second, that there is a reporting system that would indicate to the States and to the Federal Government whether, in fact, the problem continues to exist.

I think myself that there are grounds for reasonable people to agree about these things and to work out a system which meets the legitimate concerns of the Office of Civil Rights but at the same time takes account of the very serious practical difficulties which we have in the States and the local districts.

Thank you very much.

Mrs. CHISHOLM. Thank you very much, Mr. Pittinger.

One basic question I would like to ask. Am I to understand that you are not disagreeing with the basic memorandum for the Chief State School Officers but you are disagreeing with the time framework and the fact that perhaps it needs to be modified? But you do not dispute the basic premise.

Mr. PITTINGER. That is correct. We are taking the position that there is in fact a problem. The question is how to deal with it in intelligent ways.

Mrs. CHISHOLM. Thank you very much.

Mr. Miller?

Mr. MILLER. Thank you, Madame Chairman.

You just used a phrase, "deal with it in an intelligent way." What are you suggesting as opposed to the memorandum?

Mr. PITTINGER. I would suggest, for example, that if the Office of Civil Rights were to say to each of the 56 States and territories, "You have to have to us by next September evidence, A, that your State has a regulation that gets at these problems and B, a reporting system that enables us to judge whether in fact the problem is being dealt with." That would be a more intelligent way to deal with it than the very prolix requirements that I see in this OCR memorandum.

Mr. MILLER. Explain the difference. I missed the point. What did they just ask you to do?

Mr. PITTINGER. I would like OCR to take into account the fact that there are 56 States and territories that may have different ways of coming at this problem, that there may be equally good ways and that the important thing I would think from a Federal point of view was to insure that data is available which would enable the Federal Government to judge whether or not this continues to be a problem.

But I don't think for example a memorandum which requires—I think I am reading it correctly—a third-grade teacher who has just slapped a child on the wrist with a ruler, I think a requirement that that be noted in some kind of permanent record is a requirement of dubious wisdom.

Mr. MILLER. Do you suggest that the problem is not of a magnitude to warrant this type of memorandum?

Mr. PITTINGER. I suggest that it is not of a magnitude to warrant this kind of detail.

Mr. MILLER. Does that go also for the reference to discriminatory suspensions, that they in fact do fall on a discriminatory basis?

Mr. PITTINGER. I think I said all along that we agree there are places and times where discipline is administered in racially discriminatory ways. The question is whether you need the enormous apparatus of recordkeeping and so on that is involved in this memorandum in order to deal with that problem. I don't think you do.

Mr. MILLER. What would happen to children between now and next September?

Mr. PITTINGER. There isn't anything going to happen any differently than is going to happen here.

Mr. MILLER. You don't think the memorandum is going to have any impact for this school year. What are you concerned about it for?

Mr. PITTINGER. I think it is going to chiefly tie people up in knots, sir. The suggestion I am trying to make is that in the Commonwealth of Pennsylvania we are trying to come to grips with this problem. We had the regulation of the State board of education that antedates the Supreme Court decision and antedates this memorandum and is being enforced. Nobody in the Office of Civil Rights seems to know about the existence of that regulation.

Mr. MILLER. Are you suggesting they are not going to give you an opportunity because of publishing this memorandum to put forth data showing compliance with this memorandum?

Mr. PITTINGER. They certainly haven't given us an opportunity up until now even to tell them what is going on in the Commonwealth of Pennsylvania along these lines.

Mr. MILLER. You think by waiting until September that they would.

Mr. PITTINGER. I began to hear this morning some faint signs of hope that they might begin to sit down with the States and territories and say, "Look, here is the problem. Do you agree it is a problem?" To which my answer would be "Yes" and then what is the best way of dealing with it. I think there ars constructive ways of dealing with it that we might work out.

Mr. MILLER. I submit that is the purpose of these hearings.

You also mentioned earlier in your testimony that "we"—whatever this group is—that "we would sit down and decide what are the legitimate concerns." What do you suggest are the illegitimate concerns in this memorandum, the problems it ought not really to deal with?

Mr. PITTINGER. One of the questions I raised—I am not sure what the answer is—is that the memorandum purports to deal with questions of discrimination based on sex as well as questions based on race. I have seen to this point no evidence that suggests that that is a problem. My uninformed guess would be that boys get spanked more often in school than girls. Whether that is a problem that needed dealing with at the Federal level or not——

Mr. MILLER. That is what we will find out. Thank you.

Mrs. CHISHOLM. Mr. Goodling?

Mr. GOODLING. First of all I would like to point out to all the members that Secretary Pittinger has gone further than most chief administrators in the area of education—if you were to ask school superintendents—beyond what they felt was necessary to protect the civil rights of students. I think it should be known that that is the direction Mr. Pittinger has gone and that he has made every effort to make sure that civil rights of students are not violated. As I said, some administrators would say he went overboard in that direction.

Now I would like to ask you several questions, Mr. Secretary. First of all would you say that generally in dealing with the Federal Government you find a reluctance on the part of the Federal Government to consult or to involve staff officials—people who are on the firing line every day, seeing the things that are going on in school systems—before they make decisions and determinations?

Mr. PITTINGER. I think generally a direct answer is "Yes" although it does vary. There are cases where there is more consultation than took place in this case.

Mr. GOODLING. Second, you mentioned that you think the regulations that the State of Pennsylvania has put out have perhaps corrected a lot of these problems. Do you also believe that there is the possibility that because of the rules and regulations, because of every parent having a lawyer et cetera, et cetera, that many of the problems in the school are now being ignored which could be creating real problems in bringing about a proper education for all youngsters?

Mr. PITTINGER. I have to answer that question second hand in a sense. But as I go around the Commonwealth of Pennsylvania visiting school districts which I do fairly often I do hear from superintendents and principals and teachers. They lament that recordkeeping requirements, some of them posed by my own department, or some of them by the Federal Government, are occupying an awful lot of the time, some of which they think would better be devoted to teaching and guidance counseling and so on.

I think you have to take that statement with a certain reservation because I think that some of these requirements are necessary.

We have, for example, in Pennsylvania again anticipated not intentionally the Buckley amendment and put through a regulation a couple of years ago that deals with student recordkeeping. Some folks in the field are not happy about that. But there is some concern that we have made it very difficult to administer schools.

Another question that was mentioned by the gentleman before you, was that we need published rules and regulations in relation to discipline.

In your State, my State, do you not find that most school districts in fact publish a handbook and oftentimes it is published by the student council which lists rules and regulations and lists punishment in relation in many instances?

Mr. **Pittinger.** I think that is true, Mr. Goodling, although I would have to say in candor that I think we could probably do a better job than we have in making some of these things available. We find that some students and parents despite all the brouhaha over the last couple of years still do not know about our State student rights and responsibilities regulation. My student advisory board is attempting to come to grips with that problem. We have printed a couple of hundred thousand copies of a summary of it. We are going to distribute them to the schools.

Mr. **Goodling.** One final question. Do you also not find that when you talk about discrimination in dealing with discipline it doesn't necessarily mean any particular race or religion or anything of that nature, does it? Does it not also indicate that there are times when people might say there is discrimination because of family history?

Mr. **Pittinger.** There is no doubt that there is probably a social and economic element in all this. I am not a sufficiently sophisticated person to be able to unravel the element of racial discrimination from that.

But I think I would have to say on the basis of what I have known and read that there is sometimes a racial element in it which cannot be explained away simply in terms of the social and economic background.

Mr. **Goodling.** Do you not find that the majority or let me say the minority of teachers and administrators who in fact in the State of Pennsylvania discipline because of a minority or because of some racial prejudice or something of that nature——

Mr. **Pittinger.** I think we are talking about a minority of the administrators and teachers, very definitely. That of course doesn't make it any less serious for the particular child involved.

Mr. **Goodling.** In relationship to that, how have we fared in the State of Pennsylvania when we try to dismiss teachers who we feel are discriminating in discipline?

Mr. **Pittinger.** I have to be careful what I say here because I sit under our statutes in judgment of the cases in which a teacher is sought to be dismissed for unprofessional conduct. There are several of those cases pending now before me. I think I can only say by way of generalization that we do have the machinery for coming to grips with that question.

In the past school boards and others have been relatively reluctant to bring disciplinary proceedings. We have tried again to come to grips with that question by passing a regulation about 3 years ago, which you may recall, which set up a process by which I could ultimately decertify a teacher on the complaint of a parent or guardian after appropriate hearings and so on. We have had relatively few of those.

Mr. **Goodling.** Just one final statement. Secretary Pittinger has put together a rights and responsibilities of students booklet and rules and regulations primarily through the efforts of student participation, student representatives from all over the schools. They worked with the Secretary's office to bring about the students' rights and responsibilities.

Mr. **Miller**. Will the gentleman yield for a moment?

Mr. **Goodling**. Yes.

Mr. **Miller**. Secretary Pittinger, when you deal under your new regulations with a teacher who has been involved in a complaint in some form or fashion what do you know about that teacher other than that complaint? Do you talk to some administrator at the local level?

Mr. **Pittinger**. What we do, sir, is that I appoint an attorney on my staff as a hearing examiner. He or she has a due process hearing at which any evidence which is relevant to the teacher's fitness to continue in the classroom is brought before the hearing examiner. There is a formal record. A recommendation is then made to me. I make a final decision. Then there is the right of appeal to the courts, which is sometimes exercised.

Mr. **Miller**. Do you think that some kind of recordkeeping logs or history of a teacher's performance in regards to students would be helpful to the hearing officer?

Mr. **Pittinger**. I think in some cases it might. The question is simply one of balancing the degree of detail and the recordkeeping procedure on the one hand against an obvious concern for justice on the other.

Mr. **Miller**. How many teachers have been decertified in the last few years?

Mr. **Pittinger**. If you count decertification as well as revocations of tenure, which is two ways of coming at the same thing, I think we are running about 20 cases a year.

Mr. **Miller**. In fact the teacher has lost his or her tenure?

Mr. **Pittinger**. Yes, sir.

Mr. **Miller**. Thank you. How many cases come before you?

Mr. **Pittinger**. In the appeals—I am sorry. I think maybe that 20 figure is the number of cases that have come to my department and ultimately have been disposed of there.

Mr. **Miller**. In what fashion? That is my concern. My concern is that the student gets punished immediately. I want to know what happens to the teacher that the complaint is brought against. You have this process which I commend you for in terms of giving some grievance to the student or the parent or what have you.

But my concern is I want to know how does it work?

Mr. **Pittinger**. There is no question that it is a long and cumbersome process. It has to be in order to protect the due process rights of the teacher because this isn't a single set of rights that we have here. I am encouraged by facts that were put before my by our Human Relations Commission just a couple of days ago in which they showed that for 5 years there has been a steady decline in the number of complaints that they have had about discrimination in schools. It makes me think that we have begun to come to grips with that problem.

Mr. **Miller**. Out of the 20 people that have been referred to your office how many have lost their tenure or their certification removed?

Mr. **Pittinger**. Last time I looked we had sustained the school board's decision to dismiss about 60 percent of the cases and reversed in about 40.

Mr. MILLER. How many came there under recommendation to dismiss? They all came under recommendation, I guess. You are the final arbiter for the teacher.

Mr. PITTINGER. There has been a hearing. I am sorry I didn't make that clear. There has been a hearing at the local school board level first.

Mr. MILLER. And their recommendation was to dismiss?

Mr. PITTINGER. Right.

Mr. MILLER. Thank you.

Mrs. CHISHOLM. I would just like to make a brief comment. We would like to have these hearings completed by noon. I understand the other members have meetings this afternoon. So I am going to ask for all of us to try to limit our questions because we have three other persons that have to appear this morning.

Mr. Quie?

Mr. QUIE. Thank you.

Mr. Pittinger, as you understand the directive from the Department do you have to let the Department see the names of the students at all?

Mr. PITTINGER. My understanding, Mr. Quie, is that the requirement is a recordkeeping requirement. It is not, at least in its present form, a reporting requirement. I wouldn't be surprised to see it turn into that before too long. There is nothing I think in the memorandum that indicates one way or another what the answer to that is except that if you are going to keep a record of each case of student discipline as described in this memorandum it would be a bit hard to do that without identifying particular people, I would think.

Mr. QUIE. I understand that some schools now expunge from the record at the end of the school year any disciplinary action. This probably occurs when they are not severe so that there wouldn't be any record in later years of the student having an involvement. As you understand this, would this preclude the schools from doing this in the future?

Mr. PITTINGER. It might, because I think it has a sort of 2-year retention of records requirement. There is a potential conflict anyway between this and that, it seems to me.

Mr. QUIE. Did OCR consult with you or any other of the chiefs at all?

Mr. PITTINGER. No, sir.

Mr. QUIE. Have they consulted with any of you since?

Mr. PITTINGER. They have met I think with the staff and members of our Committee on Information. I happen to be a member of that committee myself. But this is a consultation after the fact. It has been within the last 3 weeks, I think.

Mr. QUIE. When the Supreme Court decision, *Goss* v. *Lopez*, came down, did that change Pennsylvania's regulations on disciplinary procedures?

Mr. PITTINGER. No, sir; because we already had had in effect at that point for some 5 months regulation which goes considerably beyond the requirements of that case.

Mr. QUIE. Do you know how the other States fare in this regard as far as their regulations are concerned?

Mr. **Pittinger.** I am sorry, sir. I really can't say that.

Mr. **Quie.** Does the Council of Chief State School Officers have that information for each State?

Mr. **Pittinger.** I am sure we can make that available for you.

Mr. **Quie.** I would request that you would make that available for the record.

Mr. **Pittinger.** We will certainly do so.

[Information referred to never supplied.]

Mr. **Quie.** How are you and how are the chiefs notifying the LEA's of the requirement?

Mr. **Pittinger.** They were notified simultaneously with us. The very last paragraph of the memorandum says something to the effect that your local chiefs are being notified. And indeed they were. I think within a day after I recieved this we began to be delrged by telephone calls from the field, saying "What is this all about?" Of course we had to say, "We don't know any more about it than you do."

Mr. **Quie.** Does OCR have a good mailing list to all the 16,000 or 17,000 school districts?

Mr. **Pittinger.** It is reasonably good because we have got a devil of a lot of phone calls.

Mr. **Quie.** I keep hearing that you got about 2 percent returns. I wish we could get their list from them.

The question that really bothers me more than anything else is, do you think the question of discipline is a Federal issue or a State issue?

Mr. **Pittinger.** I think the possibility that discipline is being administered in racially discriminatory ways is and ought to be a matter of Federal concern although I would think student discipline generally is a State and local matter.

But if in fact there is solid evidence—and there certainly appears to be some—that discipline is administered in racially discriminatory ways I certainly think that that rises to the level of a Federal concern.

My question here, as it so often is, is whether this is an appropriate way to deal with it.

Mr. **Quie.** Do you think it is a Federal concern if discipline is administered in a discriminatory way between the sexes?

Mr. **Pittinger.** I suppose in principle it is although the only evidence I have is sort of "seat-of-the-pants" evidence which suggests that little boys behave worse and therefore get disciplined more. Whether that will be interpreted someplace as a sexist remark, I don't know quite what to say about that.

Mr. **Quie.** Observation shows that there is a much higher percentage of boys going to the principal's or the superintendent's office than there are girls.

Mr. **Pittinger.** Maybe if we can change some of the sexual stereotypes then the little boys won't think that they have to misbehave in order to think that they are men. I don't hold out any great hopes along those lines. But it is worth a try.

Mr. **Quie.** Do you think that discipline for exactly the same type of conduct is the same for male or female students?

Mr. **Pittinger.** I honestly have no way of answering that question.

Mr. **Quie.** Thank you.

Mrs. **Chisholm.** Mr. Chairman?

Chairman PERKINS. I have no questions.

Mrs. CHISHOLM. Thank you very much.

Mr. PITTINGER. Thank you very much.

Mrs. CHISHOLM. Now we are going to ask Ms. Marian Edelman of the Children's Defense Fund to have the floor, please.

[Prepared statement of Marian W. Edelman follows:]

PREPARED STATEMENT OF MARIAN WRIGHT EDELMAN ON STUDENT SUSPENSIONS IN PUBLIC SCHOOLS

Chairman Perkins and Members of the Subcommittee: I am Marian Wright Edelman and I am here today, thanks to your invitation, to testify on behalf of the Children's Defense Fund of the Washington Research Project, Inc. (CDF), a nonprofit national organization created in 1973 to provide long-range and systematic advocacy on behalf of the nation's children. We are staffed with researcher's, lawyers, federal policy monitors and community liaison people working on a range of issues affecting the lives of our youngest citizens, including right to education, juvenile justice, health care, school recordkeeping, and child development services.

One of our main areas of concern has been children's right to an education. In connection with these concerns, we would like to summarize this morning some of the findings of our second study in the right to education area, "School Suspensions: Are They Helping Children?" We will also discuss our views about the Department of Health, Education, and Welfare's Office for Civil Right's (OCR) responsibility to identify and correct racially discriminatory discipline policies and practices.

Since 49 states and the District of Columbia make education compulsory and since schooling—or at least the credentials schooling confers upon children—is so important a ticket to full participation in the economic and democratic processes in this country, we believe that no child ought to be deprived of the chance to get the skills and certificates schooling provides or ought to provide.

But it came to our attention that many children were being denied the benefits of an education by a variety of school mechanisms of exclusion. In 1973, we analyzed United States Census data on nonenrollment, conducted our own survey of over 6,500 families in nine states and the District of Columbia, and interviewed more than 300 officials and community leaders. The results of these efforts were published last December in "Children Out of School in America." That report states that at least two million children, ages 6 to 17, who should have been in school were, in large part, excluded from attendance by several major factors. One of these was school disciplinary policies and practices, particularly the widespread use of suspensions. We found that 11 percent of the children out of school in CDF's survey were out because they had been suspended or expelled.

Following the release of "Children Out of School in America," we received numerous letters from parents whose children had been suspended or expelled from school and from groups concerned with school discipline policies and practices in their communities.

We also received letters from teachers, principals and school board members, asking what should be the response of schools to "disruptive" students who make it difficult to teach and learn. The recent United States Supreme Court decisions in *Goss* v. *Lopez* and *Wood* v. *Strickland* have intensified this discussion of the rights and responsibilities of all parties concerned with a student's suspension from school.

REPORT ON SCHOOL SUSPENSION

In response to this concern, we undertook further research on the issue of school suspensions. We obtained and analyzed suspension data submitted to OCR by 2,862 school districts enrolling 24,188,681 children. These data account for over 53 percent of all children and 86 percent of all minority children enrolled in the nation's public schools during the 1972–73 school year. We also interviewed additional teachers, principals, school administrators and community organizations concerned with the school discipline problem to see what the realities of discipline were in the schools and if there were alternative measures which could be used to discipline children and yet not remove them from school.

The results of this subsequent investigation were released last month in a report entitled, "School Suspensions: Are They Helping Children?" I would like to share with this Subcommittee some of our important findings and conclusions because they have a direct bearing on your own inquiry today into the compliance activities of OCR in the area of school discipline.

KEY FINDINGS

First, we found that suspensions are a major national problem affecting all kinds of children in all kinds of school districts throughout America. In the districts reporting to OCR in the 1972–73 school year, more than one million children were suspended for over four million school days or 22,000 school years. Fifteen states reported suspending over 30,000 children each. California alone reported suspending 142,000 school children—even though its data did not include any schools in Los Angeles, which reported zero suspensions to OCR. Even these numbers understate the problem of children being excluded from school for disciplinary reasons, for they leave out all those children who were expelled (and there were 37,000 expelled children reported to OCR in 1972–73); who were sent home under euphemisms such as cooling-off periods or temporary dismissal and thus not reported as "suspended" to OCR; and who dropped out of school but for whom the triggering incident in the decision to leave school permanently was a suspension.

OCR data further underestimate the suspension problem because: (1) not all school districts were included in their survey; (2) many school districts in the survey failed to report suspensions either at all or accurately; and (3) only the numbers of pupils suspended at least once were counted. Our CDF door-to-door survey showed that 40 percent of suspended students had been suspended two or more times and 24 percent had been suspended three or more times.

We found that these disciplinary exclusions are commonly used—almost a knee-jerk reaction by school officials to children who pose problems because they are different in any number of ways.

Second, like most people without specific information about the reasons for suspension, we assumed that children being suspended were committing very serious offenses. This turned out to be incorrect. We found that the vast majority of suspensions were for nonviolent, nondangerous offenses. In our survey, 63.4 percent of all suspensions were for nondangerous offenses: 25 percent were for truancy or tardiness. Similar patterns emerged as we gained access to the suspension records of other schools or districts. For example, in Portland, Maine, 85 percent of all suspensions in the two senior high schools were for truancy and tardiness during the 1973–74 school year. Portland school officials, now aware of this, are trying to correct this situation. Absenteeism headed the list of reasons for suspension during designated school years cited in our report in such diverse school districts as San Francisco, California; Prince Georges County, Maryland; Columbia, South Carolina; Nashville, Tennessee; and DeKalb County, Georgia.

In our survey, 36.6 percent of suspensions were for fighting, but only 1.6 percent were for fights with teachers or other school personnel; the rest were ordinary, student to student scuffles.

Less than 3 percent of all the students in our survey who were suspended were out for destruction of property, the use of drugs or alcohol or other criminal activity.

Third, and most important in terms of your concerns today, we found that while no group of children is immune from suspensions, they impact disproportionately on children who are black, older, poor and male. While 120,000 elementary school children were suspended, nine times as many secondary students were suspended.

Blacks were suspended at twice the rate of any other racial group. Nationally, if they had been suspended at the same rate as whites, nearly 50 percent or 188,479 of the black children suspended would have remained in school. Although black students accounted for 27.1 percent of the enrollment in the districts reporting to OCR, they constituted 42.3 percent of the racially identified suspensions. Twenty school districts reported suspending one-third to one-half of their black enrollment; one district suspended 64 percent of its black students; another, 53 percent.

Some may claim that higher suspension rates for black children simply reflect greater misbehavior on the part of black students. We disagree. We found what black parents, children and civil rights groups have charged for years: that there is racial discrimination and insensitivity in the use of disciplinary sanctions. As OCR Director, Peter Holmes has commented, "just a cursory examination of our data suggests the probability of widespread discrimination in the application of disciplinary sanctions." We found that black children were more likely than whites to be suspended if both had committed the same offense and that some offenses could only have the effect of disproportionate suspension of black youngsters. For example, carrying a metal pick used to comb Afro hairstyles or wearing a headscarf are among the suspendable offenses we found in some districts.

High suspension rates of black students are found in both segregated and desegregated school systems alike. For example, Newburgh, New York, which has resisted state efforts to desegregate suspended 22 percent of their black high school students during the 1972–73 school year. Boston, Massachusetts, where the school committee has resisted desegregation efforts but which is under a court ordered desegergation plan suspended over 50 percent of its black high school students during 1974–75. It is not desegregation that is to blame. It is the racially discriminatory action and inaction of school officials which is at fault. There are some districts with substantial black enrollments which do not suspend relatively large proportions of their black students. In fact, we found from OCR data some cities which had both low overall suspension rates and lower rates for blacks than whites. Such examples would not be found if characteristics of black children were really responsible for high black suspension rates. Whether administrators consciously enforce new forms of re-segregation: whether they fail to deal flexibly and creatively with curricula, teacher training, and modes of maintaining a good learning environment, it is the behavior of school administrators, rather than the behavior of children, which is in question.

We looked at five Ohio towns of similar size but varying proportions of black enrollment. These towns show that there is no distinct pattern in regard to school suspension policies except that black children are frequently suspended more than whites and that varying policies and actions on the part of school administrators must account for the different patterns.

SELECTED OHIO SCHOOL DISTRICTS

District	Enrollment	Percent black	Number suspended	Percent suspended			Average length
				White	Black	Overall	
Fremont	6,962	5.3	1,383	17.4	42.2	19.9	0.9
Xenia	8,271	11.3	576	6.5	11.0	7.0	5.48
Sandusky	6,943	24.4	362	2.7	12.5	5.2	12.63
Shaker Heights	7,097	30.0	153	1.4	3.9	2.2	2.63
East Cleveland	8,168	93.8	820	4.7	10.4	10.0	3.27

Source: OCR forms OS CR-102's for fall 1972 and fall 1973 as filed by local school districts. See app. A for description of data and calculations.

Fourth, we found that suspensions were not necessary to maintain order or to discipline youngsters in the majority of cases. We found a number of teachers and principals who did not resort to disciplinary exclusions and who ran their classes and schools well. Interviews with some of them are included in our report. There were a number of alternative measures which could be called upon instead of suspension and we discuss some of them in Chapter 6 of our report. We found that, "A variety of responses currently exists in school systems across the country which provide a range of alternatives to suspension for both school and student. It is not that schools do not know or cannot learn from others what to do instead of suspending students. It is that school officials need to decide first that they *want* to use an alternative . . ." And they have to be aware of what they are doing in order to have a change of attitudes. So many of them keep such poor records or fail to analyze what records they have, that they are ignorant of both the extent of reliance on suspension, the reasons they suspend, and fail to question whether it makes sense. This is no longer tolerable.

SUSPENSION AS AN EDUCATIONAL TOOL

From our studies we have concluded that suspensions do not make educational sense even if they are administered fairly. And in too many districts they are not administered fairly. Only 3.4 percent of the children in our survey knew of any hearing right. Only 2.1 had a hearing when they were suspended. Many districts still have no clear written policies that are disseminated to administrators, teachers, parents, or children. As a result, members of the school community are left in the dark about what is expected of them in the crucial area of discipline. We found among districts and within districts a variety of suspension policies. A child's chances of being suspended, therefore, depended on which district which school, and which class he or she had the luck to land in.

None of the many school officials we interviewed contended suspension helped children. Rather than justifying suspensions in educational terms almost all of the school officials we interviewed told us that they suspended children in order "to get parents in." We wonder about the effectiveness of this rationale since 33 percent of the suspended children we interviewed in our door-to-door survey said they had returned to school without any parent or school conference. Indeed, the requirement that a child bring a parent to school as a condition of reinstatement after a suspension can result in some children losing large amounts of schooling or never returning to school. And the requirement imposes a particular hardship on poor parents who either must work, cannot afford to pay a babysitter to care for other children, or cannot afford or do not have accessible transportation which middle-class parents take for granted.

There are other ways to deal with misbehavior and to communicate with parents. The absence of suspension is not permissiveness. There are other ways for imaginative school people to reach parents or to punish misconduct. One principal related the following incident when we asked "Do you have to resort to suspension to get parents to come in to school?"

He replied: "Let me tell you what we have done here. We had a kid around here who was really 'terrible' and we couldn't get the mother to come in. When the student slapped a teacher, the dean was ready to throw her out. We called her mother to come to a pre-suspension hearing, but once again she said she couldn't. So I suggested we hold the hearing at the girl's home. At first the dean was against it. No one wanted to go to the child's house—not the dean, the teacher who was slapped, not even Steve [the student ombudsman]. But there was no other way to deal with the situation, so they all went. Everyone learned something from that day. The mother got a firsthand report about her daughter's conduct in school and she realized these people really cared about her daughter and that she needed to take a more active role in guiding her behavior. The teacher saw conditions of poverty that disgusted her and gave her a feeling for the lives of her students she had never had before. The dean stopped assuming that some parents were apathetic. This woman had no husband and five small children to watch and she really couldn't come to school. And the girl did not get suspended. With all those people caring about her and pressuring her to change, she apologized to the teacher and has improved her behavior considerably since then.

"It is true that sometimes it is very difficult, and it is true also sometimes we misuse parents, but there is no reason why the schools can't go out to reach the parents."

We believe that suspending a child to reach the parent is an insufficient reason to deny a child education. We also believe that school suspensions have become a crutch enabling school people to avoid the tougher issues of ineffective and inflexible school programs; poor communications with students, parents, and community; and a lack of understanding about and commitment to serving children from many different backgrounds and with many different needs in our public schools.

What troubled us most as we collected our evidence and talked to people across the country was that although it was commonly used, suspension seemed to solve very little. It did not get to the root of the problems causing misbehavior nor did it usually set in motion diagnostic or treatment programs to deal with children's problems. Often, it did real harm to children by (1) causing marginal students to fail academically because of schoolwork missed; (2) causing permanent school leaving; (3) labeling students as troublemakers and setting up a presumption of guilt in their records and in teacher's expectations; (4) denying children the educational and other services they need; and (5) encouraging the growth of juvenile delinquency.

Evidence for this last point comes from both our investigation of school practices, from our discussions with parents and suspended children and from our interviews with various juvenile justice officials. We interviewed officials in the Massachusetts Department of Youth Services and other youth facilities and all agreed that it was schools' failure to deal effectively with the problems their students exhibited which often exacerbated children's problems and led to court-related trouble. For example, they told us:

"Ninety-eight percent of [our] children have been involved in school problems."

"Everyone has come in with some particular school problem."

"Nearly all have had trouble in school."

"You name it, they've had it. Some have been tutored at home; others are put in special classes or given social promotions. One girl never spent a full year in school before coming here."

Many administrators see the public schools as serving the majority of children, and encourage nonconforming children to go elsewhere—or are ready to have them disappear—as long as they keep out of their schools. One school official said:

"The feeling in the system is 'you can't help these people' [problem children], but you can. The thinking process can be changed. . . . Kids must be made to feel that they are worthwhile. Teachers can't continue to say, I don't have time. . . ."

Children under the supervision of the Department of Youth Services in Massachusetts whom we interviewed revealed that over 80 percent of them had been expelled or suspended before they got into trouble with the law, many of them repeatedly. Two of them said:

"I forgot how many times I was suspended in the seventh and eighth grades. They'd ask for my story but they'd always believe the teacher. They'd say, 'take a few days vacation.' ".

"The principal said 'don't bring him back, we don't want him here.' They didn't give any reason whatsoever. They said 'we'll say we caught you with marijuana.' I continuously called the school asking if I was terminated and if so, requesting that my records be sent to Worcester. They kept telling me to call back next week—that went on until December. They were playing a game and I lost a year of my life academically as a result."

A highly placed Massachusetts Department of Youth Services official remarked:

"The good schools don't like our kids, and the bad ones we don't like. We find that if we take our kids and place them in Boston public schools if we leave them off at 8:00, they're expelled by 8:30, before school even starts."

Suspending children leaves them to their own devices, at home or on the streets, often without any supervision or guidance. Parents in all of the districts we visited expressed serious concern for children "hanging around" the streets idly. Schools whose primary constituency is supposed to be children, by shedding themselves of the difficult ones, thereby shun those who most need their help.

Many children who misbehave in school or who get into trouble with the law are expressing symptoms of other kinds of problems: their own, their families', or the school's. Suspension is particularly inappropriate in response to a child's personal problem arising from a physical, emotional or mental handicap. A study of 444 students in the custody of the Colorado Division of Youth Services in 1972-73 showed that 90.4 percent of them had learning and perceptual disabilities. The mean grade they had completed was 8.8, but they functioned at a mean grade level of 4.6. A study of 1,252 children convicted of offenses in Texas showed that only 57, or 4.6 percent, were at their proper educational grade level. Students in the eleventh grade read at sixth grade level. What does the frustration of not seeing the blackboard or not hearing the teacher push a child to do? How can a child behave if he cannot perform the basic skills needed for the work around him? What is the school's responsibility in these cases? Suspension, as a school official admitted, merely moves children's problems from the school to the streets. He said:

"All the kids who are out on the streets are the ones who can't cope with the classrooms and the school. . . . They're crying for help but they're doing it in bad ways."

Youth services workers often complain about schools denying children the help they need and contributing to their getting into trouble.

"A child doesn't get picked up for services until he's in trouble."

"Almost all these kids should have been picked up as having problems in schools in the beginning. They probably were belligerent even in the first and second grades. And the amount of legitimate evaluation and consultation these kids have had is zero when they reach us."

"Schools conveniently forget about the troublemakers."

If it is a more temporary crisis because of a family incident or problem, suspension can only exacerbate it. And if the child's misbehavior is a response to uninteresting classes and curriculum, suspending the child addresses the wrong problem. So often schools blame their own inadequacies on children. The results are tragic for children and for the rest of us.

The consequences of shedding responsibility for children can be serious. In no area is this more striking than with attendance-related offenses like truancy which in many states can result in a child's institutionalization. The consequences can often be severe. For example, in an upcoming CDF report we have found that many children, some of them truant, are detained in adult jails and even in the same cell with adult criminals.

One juvenile judge in Baltimore announced that "I will no longer commit any child to a training school whose offense is solely truancy."

He stated further that:

"I believe that a radically different approach must be taken. I feel that it is the responsibility of the Department of Education to devote greater and more imaginative resources to this end.

There will have to be a variety of programs implemented to deal with the multiple factors involved. There should be special education and counseling centers in the community, the involvement of trained people from other but related disciplines, smaller schools, street academies, testing, new and more versatile curricula, more specialists to work on a one to one basis. The Department of Education is working hard in this area but much more needs to be done because the battle is not being won. This truth proves the need."

"It costs the taxpayers $6,500.00 to keep one truant in a training school for one year. With the money that will be saved by not committing any more truants from Baltimore City (unless their truancy is combined with committing criminal acts or other ungovernable behavior) much more can be poured into providing the services and facilities that can be helpful in dealing in an effective way with this problem. . . ."

Suspensions need to be replaced with fair, educationally sound and effective disciplinary measures. We believe the following steps are necessary to begin that process.

1. The substantive grounds for suspension must be drastically pruned and punishable offenses redefined so that only situations which pose a direct and serious threat to people or property are causes for temporary exclusion from school.

2. School disciplinary rules, policies and procedures, and the range of punishments for breaking them, should be made available to students and parents in writing at the beginning of each school term or year.

3. Racial discrimination in school discipline policies and practices must be eliminated immediately through strong local, state and federal action.

4. At the very minimum, schools much provide immediate and adequate due process safeguards for students before they are excluded from school.

5. Schools must begin to provide alternative services and educational programs for those who are not benefitting from regular school programs and therefore may disrupt school life. I hope this Subcommittee will consider at length another day alternatives to suspension. I urge you to look at the two chapters in our study which outline a variety of specific programs and services as alternatives to putting children out of school.

OCR'S RESPONSIBILITY

I would like now to address the responsibility of the Office for Civil Rights in eliminating racial discrimination in school discipline policies and practices.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin by any recipient of federal funds. For school systems this prohibition applies not only to student and faculty assignment but to a whole range of policies and practices including school discipline which may or may not have developed out of school desegregation implementation.

Furthermore, while racial discrimination is the most prevalent kind of discrimination in school discipline, discrimination in discipline on the basis of handicap and sex is prohibited as well under Section 504 of the Rehabilitation Act of 1973 and Title IX of the Education Amendments of 1972. Under these provisions, OCR must look into instances where pregnant girls are suspended or covertly pushed out of school and where children with special needs are suspended because of a handicapping condition. We have found that the absence of adequate special education programs in many districts results in children being suspended from school.

OCR has to date failed to pursue vigorously its responsibility to investigate and correct racial discrimination in school discipline. During the past year it has appeared to be initiating compliance activity in this area, but it is a long way from establishing and carrying out a routine compliance program. Yet OCR has been aware of the particular problem of racial discrimination in school discipline for a number of years. We, along with other civil rights groups, urged release in 1970 of an internal OCR memorandum specifically prohibiting racial discrimination in school discipline policies and practices. This earlier memorandum, entitled "Task Force Statement on In-School Discrimination, Final Draft July 14, 1970" was never sent to school systems by J. Stanley Pottinger, then Director of OCR.

In 1973, OCR's attention was once again directed to the increasing problem of black student disciplinary pushouts in southern desegregating schools in "The Student Pushout," a study by the Robert F. Kennedy Memorial and the Southern Regional Council. In testimony of May 21, 1974, before another subcommittee of the House Education and Labor Committee, OCR Director Peter Holmes acknowledged the problem of black pushouts and announced that OCR was undertaking a series of pilot investigative reviews in the area of school discipline. In December, 1975, immediately upon publication of "Children Out of School in America" in which we described again the grossly disproportionate suspension rates for minority youngsters on a national basis, we wrote OCR Director Holmes a detailed letter outlining our findings "which require your immediate and comprehensive action." We urged OCR to draft and disseminate a specific compliance policy addressing school discipline and to design and implement a specific discipline compliance program. We set forth five concrete ways OCR might combat discrimination in discipline. Copies of our letters to OCR Director Holmes are appended.

Five years after drafting but not transmitting a nationwide antidiscrimination discipline policy and over one year after announcing a pilot review program, OCR has initiated only four single-purpose discipline reviews. The discriminatory discipline practices found in the four school systems visited have not yet been resolved.

In light of this record, we wonder when OCR is going to respond to indications of discrimination in discipline in a routine, systematic way. A program of pilot reviews in which only a few OCR Regional Offices squeeze in time for a review or two is an incredibly inadequate response to the widespread phenomenon of severe racial disproportion in school suspensions which we feel should trigger investigations of racial discrimination. Not only is this crucial to the educational futures of thousands of black school children, insistance on fair procedures for black children will greatly benefit the far greater numbers of white children who are suspended.

NEEDED STEPS

The first step in undertaking a routine compliance program in any area, including school discipline, where discriminatory practices may or do exist is to collect, analyze, and respond to adequate information about how many children districts are suspending, who they are suspending, why they are suspending, and the procedures governing suspensions. OCR began, in part, this process by requiring on the annual 1968 elementary and secondary public school civil rights survey that school systems report the number of expelled students by race and ethnic group. More importantly, in Fall, 1973, OCR added to the civil rights survey two items on suspensions for each school by race and ethnic group—for the prevous school year, number of students suspended at least once and number of suspension days.

It did not, however, ask about reasons for or procedures governing suspensions. Analysis of this OCR collected data provided the basis for our findings of widespread racial disproportion in suspensions as reported in the study I have been discussing today. We and others have found this survey data very useful, indeed essential, to any understanding about the extent and nature of the suspension problem. School officials should think likewise. We are alarmed, therefore, that OCR had decided to conduct the survey on only a biannual basis in the future.

A number of districts failed to report suspensions to OCR accurately. For example, the following districts failed to give a complete ethnic identification for suspensions:

DISTRICTS WHICH FAILED TO GIVE COMPLETE ETHNIC BREAKDOWN OF NUMBERS OF SUSPENDED STUDENTS IN THE OCR OCTOBER 1973 REPORT

Rank and district name	Number of unidentified suspensions	District name	Percent of suspensions unidentified
1 Chicago, Ill	28, 633	Phoenix Union High, Ariz	100. 0
2 Philadelphia, Pa	18, 431	Bardstown, Ky	100. 0
3 New York City, N.Y	16, 268	Baltimore (city) Md	100. 0
4 Rochester, N.Y	2, 825	Downe, N.J	100. 0
5 Baltimore (city) Md	1, 790	Roselle, N.J	100. 0
6 Willingboro, N.J	1, 763	Cumberland, N.C	100. 0
7 Waterbury, Conn	1, 661	Philadelphia, Pa	100. 0
8 Peoria, Ill	1, 494	Chicago, Ill	100. 0
9 Bridgeport, Conn	1, 010	Willingboro, N.J	98. 4
10 Port Huron, Mich	932	North Bergen, N.J	96. 6
11 Providence, R.I	890	Mt. Healthy, Ohio	83. 9
12 Bridgeton, N.J	872	New York City, N.Y	83. 4
13 North Bergen, N.J	794	Waterbury, Conn	81. 8
14 Memphis, Tenn	713	Peoria, Ill	78. 8
15 Cumberland County, N.C	689	Rudyard, Mich	76. 7

OCR's own analysis of its survey data led them to conclusions similar to CDF's about the probable existence of racial discrimination in disciplinary policies. As the August 1975 OCR memorandum, "Record Keeping on Student Discipline Procedures and Actions in School Districts" stated: "This data shows that, in many hundreds of school systems throughout the Nation, minority children are receiving a disproportionate number of discipline actions in the form of expulsions and suspensions and are being suspended for longer periods than nonminority children."

OCR would be shirking its responsibility completely if it did not follow up on these findings in a comprehensive way. The OCR August, 1975 memorandum requiring school systems to maintain records on student discipline practices is an absolute first step necessity if OCR is to enforce Title VI effectively in this area.

Others will outline today problems they have with the process by which this memorandum was issued and with the substance of portions of it. Some of these objections may have merit, but we have heard of none which are unremediable or which are so serious to justify any delay in this memorandum taking effect. Indeed, we commend OCR for finally issuing it as a beginning step towards what we hope will be a comprehensive compliance program in school discipline.

Racial discrimination in the use of discipline tools such as suspension will not be eliminated or substantially reduced until OCR puts school systems on notice through a widely disseminated specific policy about what constitutes discrimination in discipline practices and what is necessary to correct and prevent in the future such discriminatory practices. Because we felt the five year OCR attempt to produce such a policy was nowhere near completion, we drafted a detailed policy we felt appropriate for OCR to issue.

Basically, CDF's proposed policy sets out criteria whereby certain defined racially disproportionate suspension rates would trigger inquiry into the objective fairness of disciplinary procedures and policies of a school system. School districts may overcome a presumption of racial discrimination evidenced by disproportionate racial suspension figures by adopting and enforcing objectively fair procedures set forth and by eliminating disciplinary offenses which disproportionately impact on minority group children. In the absence of such fair procedures and policies, a system reaching certain defined racially disproportionate suspension rates will be presumed to be in noncompliance with Title VI of the Civil Rights Act of 1964. We have requested OCR to respond in writing to this recommended policy statement and to set out a time schedule for implementing it or a similar one. A copy is appended for your information.

SCHOOL OFFICIALS WILL BENEFIT

Let me close by pointing out our hope that the OCR discipline recordkeeping memorandum will serve another purpose besides that of a compliance tool for OCR. In many school systems, as we have stated, school administrators fail to review the records and data on dicipline they have collected. Indeed, many collect almost no or very poor data about suspensions. Perhaps this memorandum will cause a number of school systems to review their school system's information on discipline, to examine the patterns that exist, and then to look behind why they exist so as to obviate federal or outside advocacy intervention. It is their own past and persisting failure to recognize, evaluate and correct their own practices in this area which have given rise to calls for federal intervention as well as increasing challenge in the courts. This can only increase if schools fail to adequately respond.

In the many meetings CDF staff members have had with school officials about discipline issues, almost invariably they are surprised at what their own data shows when it is pointed out to them. Several have been startled by racial disproportions in suspensions at various schools, by percentages of suspensions for truancy and tardiness or smoking, by demonstrated inconsistencies in due process practices if not procedures. And they have told us of definite plans to investigate and correct these problems once discovered. But we should not have to do school officials' job. Public, parental and children's confidence in schools is dependent on their credibility in this crucial area of discipline. The liability possibilities spelled out by the Supreme Court's decision in *Wood* v. *Strickland* may contribute to additional positive school response. We want to believe that school officials who too often do not know what is taking place in their own schools and school systems will, when confronted with evidence of arbitrary, educationally unsound and discriminatory practices, undertake actions to correct them. We believe this memorandum can begin to help them do so.

We are aware that many school officials feel excessively burdenend by what they view as the growing mountain of federal reporting requirements in a number of areas. We take no position on this general perception of school administrative burden here. As to this particular memorandum and the information it seeks, we feel it should be considered on its own merits and weighed against the harm done to thousands upon thousands of minority school children who suffer unfair suspensions. Any school objections made should be specific to the questions asked in this reporting requirement and not a broadside attack on general federal policy. For I cannot see how, without most of the information sought in this OCR memorandum, school officials and parent groups can adequately be informed about, monitor and evaluate the effectiveness of disciplinary policies and practices in their school communities. What the federal government is asking for is information that school systems should be maintaining as a matter of educational policy.

Proposed D/HEW Office for Civil Rights Discipline Policy

Title VI of the Civil Right Act of 1964, Title IX of the Education Amendments of 1972, and the Departmental Regulations (54 C.F.R. Part 80 and ——————) promulgated thereunder, prohibit discrimination on the basis of race, color, national origin or sex in the operation of any federally assisted programs. In 1968, pursuant to section 80.6 (a) and 80.12(b) of the HEW Title VI Regulations, the Office for Civil Rights issued "Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964" which set out requirements elementary and secondary schools must follow in order to comply with Title VI. The 1968 Policies apply to all public school services, facilities, activities, and programs including school and school system discipline policies and practices.

In recent years it has become apparent that widespread and systematic discrimination on the basis of race, color, national origin, and sex is taking place in the use of school discipline policies and practices, especially in suspension and expulsion from school. This data also shows that minority students are being sus-
Civil Rights from public elementary and secondary schools serving over 50 percent of all public school children show in many school systems large disproportions between minority and nonminority students in the use of suspension and

expulsion from school. This *data* also shows that minority students are being suspended for longer periods than non-minority students. Further, compliance reviews conducted in several school systems pursuant to Title VI and to civil rights assurances contained in Emergency School Aid Act applications have revealed a number of discipline practices which discriminate against minority students.

The purpose of this memorandum is to supplement the 1968 Policies by clarifying D/HEW policy under Titles VI and IX concerning discipline practices which interfere with the provision of equal educational opportunities to minority students or students of a single sex. Where discrimination in school discipline practices exists, school systems are under an affirmative obligation to eliminate the discriminatory practices immediately and to prevent new discriminatory practices from developing or past ones from redeveloping.

The Office for Civil Rights will annually review information on suspensions and expulsions submitted by school systems on the OCR Elementary and Secondary School Civil Rights Survey. On the basis of that information, as well as information derived from investigations and from complaints, OCR will determine a school district's compliance with Title IV and Title IX in the imposition of discipline, under the following standards:

1. Where, in any school within a school system, the imposition of expulsions and suspensions (exclusionary discipline) results in substantially greater exclusion of minority group students than all other students, as defined in paragraph 2 below, the school district will be found in violation of Title VI and or Title IX, unless it can demonstrate that its discipline system is nondiscriminatory under the standards set forth in paragraph 3, below.

2. A school will be considered to be imposing substantially greater disciplinary exclusion on students of a minority group, if any of the following factors are present:

(*a*) The number of expulsions of students of any minority group as a percentage of all students in that group exceeds by 10 percent the comparable percentage for all other students;

(*b*) The number of suspensions of students of any minority group as a percentage of all students in that group exceeds by 10 percent the comparable percentage for all other students.

(*c*) The average length of suspensions of students of any minority group is greater than one half day than the average length of suspensions of all other students.

3. Where required to do so under the terms of paragraphs 1 and 2, a school system can demonstrate that its discipline policies and practices are non-discriminatory only if each of the following factors are shown:

A. The school system has promulgated written procedures governing the imposition of exclusionary discipline, has distributed them to all students at the beginning of the school year, has posted them in a conspicuous place in each school and has followed them in all cases resulting in exclusionary discipline. At a minimum, these procedures must include the following guarantees:

(1) Written notice of the disciplinary proceeding, specifying that expulsion or suspension is being considered; identifying the rule or regulation allegedly violated; stating the facts giving rise to the proceeding; stating the time and place of a hearing, which may be rescheduled upon a parent's request; and explaining the student's procedural rights;

(2) In cases of expulsion or suspension for more than three days, the right to a hearing before an impartial hearing officer who is not assigned to the school attended by the student; in the case of suspension for three days or less, a hearing before a school official that was not involved in the incident giving rise to the proceeding. The hearing shall precede the imposition of discipline, except where the retention of the student in school until the hearing would pose a serious threat to other individuals or to property of substantial value. In such a case, the hearing shall be scheduled as soon after the initial exclusion as will permit the student to prepare and his parents or guardian to attend;

(3) The right to representation by a third party at the hearing, the right to confront and cross examine adverse witnesses and the right to present witnesses and other evidence in defense;

(4) Written decisions based on the record of the hearing, stating the reasons for the action taken.

(5) Right to appeal the hearing officer's decision.

B. The school system has adopted, with the participation of parents and students, a Code of Student Conduct; has distributed the Code to all students at the beginning of the school year; has posted it in a conspicuous place in all of its schools and has followed it in all cases resulting in exclusionary discipline. The Code must specifically define each offense for which exclusionary discipline may be imposed and specify the maximum penalty that may be imposed for each offense. The Code may not include vague or overly subjective definition of offenses, such as:

"Any misconduct which is in conflict with reasonable conduct."
"Disrespect to a teacher."
"Conduct unbecoming a student."
"Insubordination."

C. The school system does not use exclusionary discipline for any offense that is committed in significantly greater numbers by students of any minority group than by all other children except for offenses involving violence or threats of violence against persons or property of substantial value.

D. The school system maintains on a current basis a log of all exclusionary discipline which reflects for each instance of exclusionary discipline, the following information:

1. Student's name;
2. Nature of offense;
3. Description of the offense;
4. Date and form of notice;
5. Date of hearing, and name of hearing officer;
6. Whether parent or guardian attended the hearing;
7. A description of the decision taken;
8. Appeal proceeding, if any; and
9. Date of student readmission.

In addition, the school system must have established and maintained records as set forth in the ————, 1975 Memorandum for Chief State School Officers sent by Peter E. Holmes, Director of the Office for Civil Rights entitled "Record Keeping on Student-Discipline Procedures Actions in School Districts."

4. Notwithstanding any of the provisions above, a school system will be in violation of Title VI and Title IX, with respect to its exclusionary discipline practices, if any of the following conditions appear:

(*a*) Discipline is imposed for violation of any rule that is in fact enforceable only against students of a particular racial or national origin group or against students of a single sex. Examples of such rules are prohibitions on certain height, lengths or styles of hair (braids, cornrows, afros, etc.), on certain instruments of grooming (afro picks), or on certain styles of clothing; exclusion from regular classroom activities after a certain length of pregnancy; restrictions on pregnant girls, married students, and student parents which in fact only restrict the activities of members of one sex ("married students cannot play varsity football; "pregnant girls prohibited from Honor Society membership").

(*b*) Students are excluded from school attendance on account of truancy or tardiness, where in any school proportionately more minority children than all other children are in violation of such a rule;

(*c*) Students are disciplined for any offense which relates to conditions of poverty and in any school proportionately more minority students than all other students are in violation of such rules. Examples of such offenses are failure to buy textbooks, workbooks, gymsuits, and other equipment; failure to replace lost or broken equipment; or failure to pay school fees.

(*d*) There is a greater average length of suspension of minority students than all other students for the same offense or for the repetition of the same offense.

(*e*) Where any school discipline rule is enforced against minority students and not enforced against other students.

(*f*) Where individual discrimination in discipline against a minority group student is shown.

School systems should examine current practices which exist in their systems in order to assess their compliance with this policy. A school system which determines that compliance problems currently exist should communicate immediately in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where the Office for Civil Rights finds discrimination in school system discipline practices, a plan to remedy the situation must be developed by the school system. The plan must be submitted to and approved by the Office for Civil Rights. Documentation of compliance with the plan will be required annually.

Assistance in developing the plan may be requested from the federally funded Desegregation Assistance Centers a list of which is attached to this memorandum. The plan must be widely distributed in the local community served by the school system.

It is the responsibility of the school system to develop an appropriate plan to remedy discrimination in school discipline practices. Its effectiveness and continuing approval will be judged by the results of future discipline practices. A plan to remedy discrimination in school discipline must include the elements set forth in paragraph 3 above and correct any conditions present which are listed in paragraph 4 above.

Other appropriate remedies for school systems to consider in addition include:

1. In-service training programs for teachers and administrators designed to improve their skills and develop alternative techniques for meeting the instructional and discipline needs of minority students and students of one sex with persistent school-conduct problems.

2. Development of a program for the diagnosis and treatment of students with persistent conduct problems which result largely from academic difficulties caused by learning handicaps.

3. Development of a cooperative relationship with community agencies, both public and private, which can provide supportive services, technical assistance, and community support for the system's program to eliminate discrimination in school discipline practices.

4. Development of a program to identify, evaluate, and provide in-service training, technical assistance, and other aid to those teachers and administrators in whose classes or schools there are a consistently high disproportionate number of minority students or students of one sex who are disciplined by the teacher or administrator for alleged conduct problems.

5. Establishment of a systemwide and/or school parent committee to plan, advise about, and oversee school discipline policies and practices.

DEFINITIONS

1. "Suspension" means the exclusion of a pupil from school for one through twenty days for disciplinary reasons.

2. "Expulsion" means the exclusion of a pupil from school for over twenty days for discipline reasons.

CHILDREN'S DEFENSE FUND,
WASHINGTON RESEARCH PROJECT, INC.,
Washington, D.C., September 16, 1975.

Mr. PETER HOLMES,
Director, Office for Civil Rights, Department of Health, Education and Welfare, Washington, D.C.

DEAR PETER: On Monday, September 8, 1975, we delivered to your office a copy our new study, *School Suspensions: Are They Helping Children?* We hope you have had a chance to review it.

Included in our suspension study beginning on page 75 (and enclosed separately with this letter) is a discipline policy which we strongly urge the Office for Civil Rights (OCR) to adopt and widely distribute. We have researched and consulted widely in preparing this proposed policy and would like to discuss it in detail with you and your staff. We would appreciate establishing a date to meet within the next three weeks. We also request a formal letter of response within three weeks outlining and explaining OCR's reaction to our proposed policy and specifying OCR's plans and time schedule for the issuance of a discipline policy. If there are no such plans, we would like a justification of why there are none. We would also request that the letter address the issues we raise below.

On December 19, 1974, upon completion of *"Children Out of School in America,"* and again on February 14, 1975, we wrote you about our findings in the school discipline area, particularly the highly disproportionate impact of disciplinary exclusions on minority children. In those letters we also (1) raised concerns about OCR's data collection procedures and quality and made recommendations for their improvement; (2) set forth our recommendations on the kind of compliance *standards* that should be adopted and enforced by OCR in the area of school discipline; (3) proposed a survey form on school discipline to be sent to school systems with racially disproportionate suspensions; and (4) urged OCR to adopt and distribute to all school systems a specific policy outlawing discrimination in the use of discipline under Title VI of the Civil Rights Act of 1964.

We have been very disappointed with the Office for Civil Rights' response to our formal recommendations.

DATA GATHERING AND ANALYSIS

While data analysis procedures have improved for the more recent school years, there have been no attempts to improve the quality of old computer tapes—for example, the tape for 1972–73—which should be done for comparative purposes to determine continuing patterns of discrimination. Nor has there been any attempt to discuss with the Children's Defense Fund the very complex issues we raised about OCR's data analysis procedures. OCR staff cancelled and never rescheduled a February 24, 1975 meeting with Paul Smith and Cindy Brown of our staff. We would have liked to discuss the points raised in your letter of May 20, 1970, but have never been given that opportunity.

OCR's decision to conduct the elementary and secondary school civil rights survey biannually rather than annually is a regressive step toward the goal of obtaining timely and usable data.

We do commend OCR for the issuance of the August 1975 Memorandum for Chief State School Officers entitled "Record Keeping on Student-Discipline Procedures and Actions in School Districts." Putting school systems on notice to collect this data is a first step. OCR analysis of this data and response to evidence of racial discrimination are necessary second and third steps.

COMPLIANCE PROGRAM

In May 1974 you announced in congressional testimony that OCR was undertaking a series of pilot reviews of school systems in the area of school discipline. To our knowledge only four such reviews have been initiated and none have been completely resolved. What is the reason for the delays in resolving these reviews and what are your plans to undertake routine and systematic reviews in the area of discipline? As a result of these pilot reviews have you developed any compliance standards similar to those we proposed in our December and February letters?

Finally, as we have communicated to you before, we view the proposed regulation published June 4, 1975, "Consolidated Procedural Rules for Administration and Enforcement of Certain Civil Rights Laws," as an attempt to undermine all of OCR's statutory responsibilities, specifically with regard to complaint response and investigation. All four pilot reviews in the discipline area were initiated in response to complaints. We cannot help but wonder if even they would have taken place were the proposed consolidated procedural regulation in effect. We again strongly urge you to withdraw the proposed regulation and to undertake a program including both complaint resolution and routine OCR initiated systematic reviews.

We look forward to meeting with you soon.

Sincerely,

MARIAN WRIGHT EDELMAN.

CHILDREN'S DEFENSE FUND,
THE WASHINGTON RESEARCH PROJECT, INC.,
Cambridge, Mass., December 19, 1974.

PETER HOLMES,
Director, Office for Civil Rights, Department of Health, Education, and Welfare, Washington, D.C.

DEAR PETER: The Children's Defense Fund of the Washington Research Project has just completed a study on "*Children Out of School in America.*" The report contains (1) the results of our own survey of 8,500 households in nine states and the District of Columbia; (2) our analysis of 1970 U.S. Census data on nonenrollment; (3) our analysis of data submitted to your Office for Civil Rights (OCR) from school districts in five states on school suspensions and expulsions as well as the school districts in our survey who reported to you; and (4) our analyis of data submitted to OCR from 505 school districts in five states on children enrolled in educable mentally retarded (EMR) classes and from the districts in our survey.

Subsequently, we were able to obtain with the cooperation of your office, which we greatly appreciate, the unedited 49-state data reported to you on school suspensions and on special education placement. While these latter data are not included in this first report, we have now analyzed the national school discipline data. Our detailed analysis of your suspension data covering more than 2,800 school districts and 24,188,681 children will be set forth in a subsequent report on school discipline policies and practices.

However, we wanted to share with you some of our key findings in the school discipline area at this time, particularly our concerns about the strikingly disproportionate impact of disciplinary exclusions on minority children which require your immediate and comprehensive action. We also wanted to share with you our concerns about OCR's data collection procedures and quality and to make specific recommendations for their improvement. While we have had a number of communications regarding OCR's survey questionnaire and scope, we know now with much greater specificity how your data might be improved in order to ensure an effective compliance program. Most importantly, we wanted to set forth our views on the kind of compliance standards that must be adopted and enforced by OCR if thousands upon thousands of children are not to be lost to the educational process because of racially discriminatory or otherwise arbitrary and unnecessary school suspensions.[1]

WHAT WE FOUND

OCR Suspension Data

School suspensions are rampant all over America and deprive hundreds of thousands of school children annually of needed education. The Children's Defense Fund's analysis of suspension data submitted to your Office for over 2,800 school districts reveals that during the 1972–73 school year, at least 1,012,347 children were suspended at least once for over 4,062,408 school days or 11,130 school years.

Among secondary school children and among minority children, schooling deprivation through suspension is especially acute. Eight percent of all secondary school children in these districts were suspended at least once. While 6 percent of white secondary school children were suspended, 12 percent of the Black secondary school children were suspended. At the secondary school level and overall, Black school children were suspended almost twice as much as white school children—3.1 percent versus 6 percent.

In our view, even these figures substantially understate the suspension problem. Many districts underreport suspensions or call them by other names, such as voluntary dismissal, cooling off periods, etc. For example, the city of Los Angeles reported zero suspensions. Chicago and New York failed to give an ethnic breakdown of the more than 50,000 children they admitted suspending. Moreover, these figures only represent instances where children were suspended at least once. We found, for example, that of the children suspended in our survey, 40 percent were suspended more than once.

CDF Suspension Data[2]

Our survey corroborates OCR's data regarding the disproportionate suspension of minority students. At the secondary school level, Black students in our survey were suspended more than three times as often as white students—12.8 percent compared with 4.1 percent.

In eight areas we surveyed, over 15 percent of the Black secondary school students were suspended, and in six areas over 20 percent of the Black secondary school-age males were suspended. In three areas, over 30 percent of the Black males were suspended: New Bedford, Massachusetts Census Tract 6510 with 36 percent; Sumter County, South Carolina Precinct 2 with 36 percent; and Columbia, South Carolina Census Tract 5 with 35 percent. In two areas, over 30 percent of the Black secondary school-age females were suspended: Denver Census Tract 41.01 with 31 percent; and New Bedford Census Tract 6526 with 33 percent.

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[1] At a later date, we will share with you the problems we have identified in the racially disproportionate assignment of minority children to certain types of special education classes, particularly classes for the mentally retarded. Chapter 4 of our report points out that Black children are twice as likely to end up in mentally retarded classes as white children. In some districts it is as high as 10 times as likely. We believe that, in large part, the attitudes and processes that result in minority children being placed in these classes are the same as those resulting in their disproportionate victimization by school disciplinary devices.

[2] The use of expulsion does not appear in OCR data to be as striking as the suspension problem. However, we found in our survey that school officials use devices tantamount to expulsion, for example "voluntary withdrawals" but do not report them as expulsions on their records or to OCR.

The next highest suspension rates at all levels were among Puerto Rican and Mexican-American school children: 4.5 percent and 3.9 percent. At the secondary school level, 9 percent of the Puerto Rican and 7.1 percent of the Mexican-American children in our survey were suspended.

FREQUENCY AND DURATION OF SUSPENSION

In our own survey we were able to go beyond existing OCR data by examining the frequency of suspensions. Among students suspended at all, 24 percent were suspended three or more times, 40 percent were suspended twice and 60 percent were suspended once. Black students were more frequently the victims of multiple suspensions than were white students: 42 percent of Black students had been multiply suspended versus 27 percent of white students.

While a discriminatory pattern seems apparent from the frequency with which minority students are suspended, in our survey we found no apparent racial pattern in the duration of suspensions. Our analysis of OCR data, however, shows that Black students are suspended 25 percent longer than white students: an average of 4.5 days compared to 3.5 days.

REASONS FOR SUSPENSIONS

OCR data does not provide reasons for suspensions. In our own survey, though, we found that 63.4 percent of all the suspensions were for offenses that were neither dangerous to persons nor to property; 24.5 percent related to truancy and tardiness. Only 3 percent of the children were suspended for destruction of school property, "criminal" activity, or the use of drugs or alcohol. In some surveyed areas the percentage of students suspended who were suspended for truancy and tardiness was amazing:

	Percent
Springfield, Mass., Census Tract 8008	50
Columbia, S.C., Census Tract 5	41
New Bedford, Mass., Census Tract 6510	38
Sumter County, S.C., Precinct 2	35
Denver, Colo., Census Tract 41.01	31
Holyoke, Mass., Census Tract 8112	30

Frequently, suspensions are a unilateral process with little or no chance for children or their parents to be heard. Only 3.4 percent of the parents and children in our survey had been informed of a hearing and only 2 percent requested and were given any kind of hearing. And they are often imposed so arbitrarily that they lack all semblance of fairness or rationality.

Our report shows that the out-of-school problem in America is grave. That exclusion through suspension is a major contributing factor is evident.[3] That racial discrimination permeates their use is equally evident fom the startling disproportions of minority children affected. Those of us who have long worked in minority communities have known about the racially discriminatory practices in this area. With confirmation from our analysis of OCR data and our survey, we believe there can no longer be any excuse for your office failing to take swift and effective action to weed it out. The educational futures of thousands of Black children are at stake. OCR data shows that at least 188,479 Black children would not have been suspended if they had been suspended at the white rates.

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[3] We are convinced that expulsions, suspensions, and their progeny have become so pervasive and harmful as to be discredited as appropriate or effective disciplinary and/or educational tools. No school officials in our survey claimed suspensions helped children to solve their problems. Indeed, instead of seeking to help children through in-school alternatives, these devices serve to put children and their problems in the street. The most frequently stated rationale for suspending children given us by school officials was "to get parents in." This seems drastic as well as unconvincing in view of the infrequent attempts to hold real parent-school conferences to work to solve the problem resulting in the child's suspension. The threat of disruption to the educational process for other children is believed by the great majority of offenses which are non-disruptive in nature. While we discuss some alternatives in Chapter 5 of our report, our subsequent report on school discipline will explore alternatives to exclusion in greater detail.

We think it is important to point out, however, that while Black and other minority children suffer most, suspension is not just a minority problem. Nearly ½ million white children's suspensions are shown by your data. Reform in this area for minority children would serve the broader purpose of helping all children remain in school which is our overriding goal.

OCR'S RESPONSIBILITY

The Civil Rights Act of 1964 mandates your office to eliminate racial discrimination in the area of school discipline. Because we feel the urgency of this problem, we are setting forth below specific steps and procedures CDF feels are required to alleviate the problems found by minority children in this area. They are neither radical nor impossible to implement. Some simply require more efficient use of existing resources and leadership from you and your staff. Others will require additional staff resources or a reallocation of existing staff resources.[4]

TITLE VI

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, states that "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. 2000d 1 requires all Federal agencies disbursing such assistance to issue "rules, regulations, or orders of general applicability" effectuating 2000d. Such regulations for the Department of Health, Education and Welfare are found at 45 C.F.R. 80.1 et seq.

Although the Department has issued 45 C.F.R. 185.43(d)(4), making ineligible for Federal funds any educational agency which "impos(es) disciplinary sanction, including expulsions, suspensions, or corporal or other punishment, in a manner which discriminates against minority group children on the basis of race, color, or national origin," this Regulation applies only to funds distributed under the Emergency School Assistance Act (ESAA). As important as these funds are, they pale in significance before the much vaster sums allocated to school districts under other Federal programs. Yet OCR has not acted to provide specific prohibitions under 2000d–1 to enforce Title VI vis-a-vis these other programs.

Racial discrimination in public education has many faces and takes many forms. While most of the initial effort toward desegregating schools was aimed at the more egregious forms of school segregation, i.e. denial of admission to Black children and assignment of Black teachers to previously all-white schools, it soon became apparent that there were many kinds of in-school segregatory acts and discriminatory practices that denied minority children equal educational opportunity. We outlined these practices in several earlier reports issued in conjunction with a number of other civil rights organizations.[5]

OCR has been aware of the specific problem of racial discrimination in the discipline process for a number of years as well. Along with other civil rights groups, we urged release in 1970 of an internal OCR memorandum specifically prohibiting racial discrimination in school discipline policies and practices. This memorandum captioned "Task Force Statement on In-School Discrimination, Final Draft July 14, 1970" was addressed to all school districts from J. Stanley Pottinger your predecessor. It would have prohibited among other things:

(11) Any act of school administrators or other responsible persons relating to the discipline of students (including expulsion and suspension) including but not limited to: acts, the effect of which is to deny to any student, on the basis of race, color or national origin, notice of those actions which constitute prescribed conduct; an opportunity for and the conduct of a fair hearing; punishment equal to that given other students with equivalent disciplinary background determined

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[4] We are informed that there are currently about 100 unfilled OCR staff positions. This might constitute a beginning compliance staff.

[5] See "The Status of School Desegregation in the South," 1970, Washington Research Project, Inc.; American Friends Service Committee; Delta Ministry of the National Council of Churches; The Lawyers' Committee for Civil Rights Under Law; The Lawyers Constitutional Defense Committee; and the NAACP Legal Defense and Educational Fund, Inc., and "It's Not Over in the South" (written by the American Friends Service Committee with our and four other organizations' cooperation, May 1972).

to have violated the same rule or regulation; participation in student rule formulation; and including any act of formulation or enforcement of rules or regulations the effect of which is *in fact* to discriminate against any student or students on the basis of race, color or national origin. (*Any student dress or grooming code which is in fact only enforced or enforceable against students of a racial or national origin minority group or groups is discriminatory.*)*

A 1973 Robert F. Kennedy Memorial—Southern Regional Council report, *The Student Pushout*, called attention once again to the increasing problem of Black school disciplinary pushouts in southern desegregating schools. While you acknowledged the problem in testimony before the House Equal Opportunity Subcommittee, few specific affirmative efforts by your office to tackle racial discrimination in the discipline process or to establish compliance policies and procedures in this area have ensued.

First: OCR has taken the position that discriminatory discipline practices are adequately covered by present Regulations and Guidelines. However, the results from your data and our survey render this position untenable. "The 1968 Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964" must be supplemented to deal with the specific problems of racially discriminatory use of school expulsions and suspensions and other school exclusionary tools which violate the Constitution and Title VI. *Hawkins v. Coleman*, 376 F. Supp. 1330, N.D. Tex. June 5, 1974. A start might be to release the Pottinger memorandum relating to discipline set forth earlier.

Such a minimum step is dictated in order to alert school officials that they can no longer act with impunity to deprive minority children unfairly of equal educational opportunity. A specific policy would also help educate unwitting school officials, parents and the public, of the serious nature of the problem and of your concern with its remediation. A specific policy outlawing discrimination in the disciplinary area under Title VI should be accompanied or followed by specific guidelines and procedures for identifying and correcting racial discrimination.

Second: OCR has sought to justify inaction on the ground that proving discrimination in the discipline process is difficult. Indeed, OCR has suggested that the burden of proof problems are almost impossible even in the face of grossly disproportionate minority suspension rates. While we agree that the proof problem is real, we think it is far less severe than OCR has suggested. Judicial opinions already exist to lend guidance. OCR could establish statistical tests as a means to trigger compliance reviews and to establish *prima facie* cases of violation of Title VI in the discipline area. *Adams* v. *Richardson*, 480 F.2d 1159 (D.C. C.A. *en banc*, 1973). While we do not pretend that our proposed tests are the last word on the subject, indeed, each presents certain problems, we think they can and should serve as the basis for discussion with you about specific guidelines to implement Title VI in this area.

WHAT SHOULD CONSTITUTE PROOF OF DISCRIMINATION

Chi-Square Test

It has now become a judicial cliche that "statistics often tell much and Courts listen," *State of Alabama* v. *United States*, 304 F.2d 583, 586 (5th Cir.), aff'd per curiam, 371 U.S. 37 (1962). The United States Supreme Court has been willing to accept statistical modes of proof in civil rights cases and has required the shifting of the burden of proof upon presentation of strong statistical evidence. See, for example, *Turner* v. *Fouche*, 396 U.S. 346 (1970). Without plowing any new legal ground, OCR could establish guidelines wherein certain statistical distributions will be presumed to constitute discrimination and which will compel a school district to demonstrate that it is not discriminating. *Chance* v. *Board of Examiners and Board of Education of the City of New York*, 330 F.Supp. 203 (S.D.N.Y. 1971), aff'd, 458 F.2d 1167 (2d Cir. 1972), specifically accepted the use of the "Chi-Square Test (Yates-corrected), which is a method using formulas generally accepted by statistical experts to determine whether an observed difference in any given sample is greater than that which would be expected on the basis of mere chance or probability." 330 F.Supp. 212. By statistical convention a finding is deemed "significant" only where there is less than a one in 20 probability that a given distribution would result by chance. Indeed, this methodology was accepted in the context of a specific challenge to the school discipline policies and practices of the Dallas Independent School System in *Hawkins v. Coleman, supra.*

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* See appendix C of "The Status of School Desegregation in the South," pp. 113-114.

Although there are certain problems with Chi-Square methodology, including the necessity to have relatively large numbers in one's data base, it would certainly be an acceptable OCR test to establish a *prima facie* case of discrimination, with the consequent shift of the burden of proof to school systems suspected of discriminating. In fact, qualms about Chi-Square arise more from the fact that it is a "conservative" methodology insofar as it works to "legitimize" distributions that would occur by chance only one in 19 times.

There are a variety of statistical tests in addition to Chi-Square which would be equally admissible before courts and administrative hearings. Each has its strengths and weaknesses.

TEST I

In any school system with over 15,000 students, it shall be *prima facie* evidence of racial discrimination in the disciplinary process *either* if the percentage figure of "minority" students disciplined relative to all students disciplined exceeds by 5 percent the percentage of "minority" students in the "base population" *or* if the percentage excess is over 2 percent and 75 percent of the individual schools within the system report totals indicating at least such an excess in their own disciplinary process.

The rationale behind the first criterion is obvious; the rationale of the second is not. CDF's statistician has compared this later methodology to the process of assessing the fairness of the coin and the coin-flipper by studying the distribution of "heads" over a number of flips. Taken by itself a 2 percent excess might not be a powerful indicator of racial bias; however, if we break down the total figure into school-by-school components, and 15 out of 20 report at least such an excess, then we have the same reason to be curious about the fairness of the process as we would be if a coin turned up 15 heads in 20 flips. If no racial bias is present, we would expect whites to outnumber Blacks, adjusted for percentages, at least as often as the reverse.

OCR might argue that there are too many school districts which would meet the first part of the test and that OCR could not enforce such a program with its limited staff. This could also be pointed out with use of the Chi-Square test or any test. But the existence of this problem would be in itself evidence of the magnitude of apparent racial discrimination which demands correction so urgently. The answer should not be a do-nothing stance. Rather steps should be taken to begin correcting the problem, including requesting the requisite staff for OCR to act effectively. Moreover, OCR would have to establish priorities to guide its selection of districts for further review and termination hearings if necessary. Such priorities could relate to the percentage excess and/or to the absolute number of minority children apparently affected by discriminatory action.

For example, from OCR data, we have nationally ranked the 20 worst districts for total suspensions, white suspensions and black suspensions as well as by percentages of school populations, by race, and by average length of suspensions. Similar breakdowns have been done on a state-by-state basis. As our subsequent report will show, where to begin will be guided in large part by the data's indication of where the greatest suspension problems are.[7]

If the 5 percent and Chi-Square tests are potentially overinclusive, the 75 percent of schools tests may be underinclusive. The severest disciplinary problems and accompanying racial discrimination tend to arise at the junior and senior high school levels. Relatively few elementary school children are disciplined though in absolute numbers the fact that 119,071 elementary school children were suspended in the 1972–73 school year for at least 483,517 school days warrants our dismay. Because most school systems have many more elementary schools than junior and senior high schools, the 75 percent test *per se* might not identify systems which are in fact discriminating. Therefore, one answer might be to use this test whenever 75 percent of the *junior and senior high schools* show the 2 percent excess. This latter approach may raise a potential problem in school systems with so few schools that the 75 percent index might be rendered unreliable. This could be remedied, however, by a written rule requiring a minimum number of eight schools in the sample before the 75 percent method would come into play.

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[7] While we are aware that a comprehensive investigation is underway in New York City and contemplated in several other major cities, this single effort is no substitute for adoption of compliance standards for all districts. School officials should have a standard against which to judge their actions. Indeed, many school officials with leadership from you might voluntarily seek to comply, or at least pay closer attention to their discipline practices. Parents and children would have a framework against which to judge school officials' actions and to take action themselves. Moreover, the New York City investigation is not specifically on discipline. It has been in process for about two years and promises to hang on indefinitely. Such a compliance investigation in one place should not be permitted to block compliance efforts in the seven other regional offices.

TEST II

In any school system with 5,000–15,000 students, it shall be *prima facie* evidence of racial discrimination in the disciplinary process *either* if the percentage of "minority" students disciplined relative to all students disciplined exceeds by 8 percent the percentage of "minority" students in the "base population" *or* if the percentage excess is over 5 percent and 75 percent of the individual schools within the system report totals indicating at least such an excess in their disciplinary process.

The earlier discussion of Test I pertains here as well. In addition, as the number of students decreases, the possibility of distorted results increases because of the emphasis on percentage differentials. But guidelines or priority rules could take into account such possible problems.

TEST III

In any school system with under 5,000 students, it shall be *prima facie* evidence of racial discrimination in the disciplinary process *either* if the percentage of "minority" students disciplined relative to all students disciplined exceeds by 10 percent the percentage of "minority" students in the "base population" *or* if the percentage excess is over 5 percent and 75 percent of the individual schools within the system report totals indicating at least such an excess in their disciplinary process.

These four statistical tests focus on the school *system*. Though the 75 percent trigger depends on disaggregating the system into component school units, they are insufficient where a school system as a whole appears to be nondiscriminatory except for one or two schools. Possibly, complaints from parents and students can help identify such situations and organized parental activity remedy them. Student and parental input in the discipline process is an essential component that must be mandated. Indeed, they should be involved in the formulation of such local policies and procedures. Where the overall system appears to be making a *bona fide* effort to be fair, as measured by objective data, flexible and informal prodding by parents and by your office should be sufficient.

DATA PROBLEMS

In relying on statistical tests to shift the burden of proving nondiscrimination onto individual school districts, OCR would have to institute major quality control standards and procedures in the National School Survey. We think the Survey is a useful instrument upon which to build a compliance program. However, substantial improvement must occur both in the kinds of questions asked on school discipline issues (see our letters to you of March 22, 1974 and April 12, 1974 recommending changes in the survey's questions) and in the timeliness of your data analysis.

Quality Control

In preparing our report of the incidence of students suspended from schools based on your data, we encountered an indefensible number of errors in the data. Poor workmanship by the contractor was evident throughout. Many of the mistakes were so blatant—for example, New York City was listed twice!—that it is apparent that no one had edited it for any possible use. We threw out over 40 districts because of the dubious nature of the data.

Attached is Paul Smith's (CDF's statistician) description of some of the data problems we confronted. A further technical memorandum will be prepared by him and forwarded to your data people. Most of the problems set forth in his memorandum are correctable and all are detectable. He would be happy to work with OCR staff and contractors to ensure that such problems are not repeated.

Survey Questions

In addition to the kinds of questions set forth in our letters in March and April, your questionnaire seeks no information from school districts on discipline policies, due process procedures, offenses, average length of punishment by race and by offense, etc. This information could and should be the basis for further tests to trigger compliance efforts. Alternatively, such information could be collected upon failure of school systems to meet the initial statistical tests. Such failure could then trigger a form letter follow-up survey seeking information on policies and procedures which might be answered within 30 days. Alternatively or additionally, on-site reviews might solicit such information. However, it is crucial that school systems be advised of the necessity of their maintaining certain kinds of information. Attachment II is our draft suggested letter/survey form incorporating such questions.

Procedural Due Process

Failure to accord due process is endemic in school districts throughout America. Discipline is still, for the large part, hidden in the recesses of principal and sometimes teacher discretion. Parents and children have litttle voice or protection as Chapter 5 of our report shows. This is not only unfair to students, but it makes it difficult to monitor discipline figures submitted by school systems. While fair procedures are not the sole answer to the rampant use of suspensions, they are a beginning threshold for judging the fairness and validity of a school system's practices in this area. Even if there is agreement, for example, that students who "threaten" a teacher should be suspended, it will not be at all clear from looking at raw figures of students suspended for such an offense how many actually did so, unless one makes the entirely unjustified presumption that existing school procedures which lack elemental due process are impeccable in their fact-gathering and evaluating capacities. The U.S. Supreme Court has before it now the issue whether constitutional due process requires a hearing in public school suspensions. The record in this case, *Goss* v. *Lopez*, reveals that the stated policy of the Columbus, Ohio school board is to accept a teacher's description of an incident as determinative, without giving a student any chance to offer his or her own story of what occurred. Regardless of the Court's decision, however, OCR has an independent obligation to encourage a system of fair procedures for purposes of Title VI.

We urge in our report that due process procedures prior to a student's exclusion from school is not only a necessary legal prerequisite but is an essential educational prerequisite. It is crucial that public school children believe schools are fair and just. They cannot do this unless in fact schools are fair and just.

TEST IV

I propose another test, therefore, for establishing a case of *prima facie* discrimination which involves evaluation of procedures, to wit:

In the absence of procedures guaranteeing full due process to students prior to disciplinary exclusion (except where there is a clear and immediate danger of violence), including but not limited to written notice, confrontation and cross-examination, access to counsel or other advocate, and written decisions by impartial hearing officers, it shall be *prima facie* evidence of racial discrimination in the disciplinary process *either* if the percentage figure of "minority" students disciplined relative to all students disciplined exceeds at all (alternatively by 2 percent) the percentage of "minority" students in the "base population" *or* if 75 percent of the individual schools within the system report totals indicating any such excess.

TEST V

This test would attempt to look at a variety of indices that may indicate discrimination. Problems such as unequal levels of punishment or unequal kinds of offenses (certain offenses are only minority offenses) may also serve to exclude children unfairly. Information as to the kinds of offenses levied for what kinds of students and for what duration and/or severity would have to be elicited. We propose that it should constitute evidence of racial discrimination whenever the average punishment of minority offenders for given offenses exceeds the average punishment accorded non-minority offenders. It should also constitute evidence of discrimination if the average punishment for any given offense has increased or if the kinds of offenses punishable have increased since the beginning of desegregation of a formerly segregated school system and if the percentage of minority students disciplined for any such offense exceeds their base percentage vis-a-vis the non-minority school population. If evidence of all these exist, such evidence should constitute a *prima facie* case of discrimination.

While this guideline will be useful mostly in systems that are currently or recently desegregating (Boston, for example, has suspended more than 1,500 pupils since September when its desegregation plan took effect), OCR should take care that future problems are alleviated by collecting data on these issues and monitoring school systems as desegregation proceeds.

By proposing these tests we do not intend in any way to hamper the complaint process for parents and children as a way to trigger investigation and response by you.

There remain other complex questions. But I hope that the discussion here can serve as the basis for a serious and continuing set of discussions with you in the near future. CDF and other groups long involved in ensuring equal educational opportunity are committed to seeing that something is done. I do not claim that CDF's suggestions are the last word on these complex issues. Indeed, I have tried to candidly point out some of the potential problems that are presented by our proposed tests. But I believe that these problems are soluble with reasonable effort.

The time is long overdue for a decision in this area. The nation and its children must end the educational and personal waste that is reflected in the thousands of educational lives lost now through disciplinary exclusion, many for unnecessary reasons and others by unfair means.

Sincerely yours,

MARIAN WRIGHT EDELMAN.

PROPOSED SURVEY FORM FOR SCHOOL DISTRICTS FAILING TO MEET PROPOSED STATISTICAL TESTS ON RACIAL/ETHNIC DISPROPORTIONS IN USE OF SUSPENSIONS AND/OR FOR PURPOSES OF ESTABLISHING A PRIMA FACIE FINDING OF RACIAL DISCRIMINATION UNDER TEST IV

[For each length of suspension which is permitted in your district, check the due process procedures which must be followed in the course of the suspension decision]

	Indeterminate[1]	Length of suspension period in days							
		1	2	3	4	5	6 to 9	10	Over 10
Written notice of suspension to student									
Written notice of suspension to parent									
Right to a hearing									
Right to counsel or 3d-party advocate									
Right to summon and cross examine witnesses									
Impartial hearing examiners									
Written hearing decision									
Appeal of hearing decision									
Check if suspensions for the indicated length in days are not allowed in your district									

[1] A suspension is considered for purposes of this report to be indeterminate only if a student does not know the length of his or her suspension after all administrative procedures have been completed.

2. Check the due process procedures used in your school system when a student is expelled:

Written notice of expulsion to student ______
Written notice of expulsion to parent ______
Right to hearing ______
Right to counsel or third-party advocate ______
Right to cross-examine ______
Impartial hearing examiners ______
Written hearing decisions ______
Appeal of hearing decision ______

3. Does your school system publish and distribute written policies on suspensions and expulsions which include a list of offenses which may result in suspension or expulsion and the penalties for such offenses?

Yes ______ No ______

If yes, check those persons who receive copies of the policies.

Students ———
Parents ———
Teachers ———
Principals ———
Other school officials ———

If no, do principals determine offenses which may result in suspension or expulsion?

Yes ——— No ———

If no, do teachers determine offenses which may result in suspension or expulsion?

Yes ——— No ———

4. If your system has adopted written policies on suspension and expulsion, were teachers, parents and students involved in their formulation?

Teachers Yes ———
No ———
Parents Yes ———
No ———
Students Yes ———
No ———

5. Is there any provision for regular participation in disciplinary policies and practices of:

Teachers Yes ———
No ———
Parents Yes ———
No ———
Students Yes ———
No ———

If yes, describe such provision for each group.

6. List below the types of disciplinary measures other than suspension and expulsion used in your school system to remove children from their regular classrooms for any period of time including but not limited to disciplinary transfers, in-school detention, etc.

7. Does your school system allow the use of voluntary or consensual withdrawals in lieu of suspension or expulsion?

Yes ——— No ———

If yes, for what kinds of offenses or situations.

----

8. List below the offenses for which students may be suspended and the length of the suspensions. Please be as specific as possible. Define any broad categories of suspensions listed such as "violation of school rules", insubordination, "disruptive behavior," etc.

9. List below the offenses for which students may be expelled. Please be as specific as possible. Define any broad categories of expulsions listed such as "repeated violations of school rules," "repeated insubordination," disruptive behavior," etc.

10. For each type of offense above, and for each junior or senior high school or school with grade 7 or above, list on a separate page, the number of students suspended, the number of students expelled, and the suspension days by race and national origin. Use the format below:

	American Indian	Black American	Asian American	Spanish surnamed American	Others	Total
Offense: ———						
Students suspended						
Suspensions:						
1 day						
2 to 3 days						
4 to 10 days						
11 to 20 days						
Students expelled						
Offense: ——— (same as above)						

11. Does your school district take steps prior to suspension or expulsion to solve the problem requiring exclusion? Yes ______ No ______

If so, please indicate procedures followed:
Conference with child ______ ______
Conference with parent ______ ______
Referral for counselling ______ ______
Referral to diagnostic services ______ ______
In-school detention ______ ______
Other? ______ ______

CHILDREN'S DEFENSE FUND,
THE WASHINGTON RESEARCH PROJECT, INC.,
Washington, D.C.

Memorandum:
Re Office of Civil Rights 1972 and 1973 Elementary and Secondary Survey Data Base on Magnetic Tape, Data Set Names: LDMSOUT and LDMS73.
To: Marian Wright Edelman.
From: Paul Smith.

I. HOW WE ANALYZED OCR SUSPENSION DATA

In preparing our report of the incidence of students suspended from schools, we made use of the data base for 1972–73 and for 1973–74 provided to the Children's Defense Fund by the Office of Civil Rights. Since the same data base will be used by the Office of Civil Rights for their own analyses, I will list some of the conditions we encountered in using the magnetic tapes and the documentation prepared by the Office of Civil Rights contractor.

Because the remainder of this memorandum is rather technical (and meant to be of use, primarily, to the Office's data processing specialists), I offer here a plain language summary of our experience.

1. The documentation that we received was incorrect with respect to the most basic properties of the data. It was incorrect about the physical length of data blocks on the data tape. It was incorrect about the sequence in which data for different school districts would appear on the data file. It was incorrect about the logical structure in which the data is arranged in the data base.

2. The contents of the data bases show evidence of either incomplete processing or of poor workmanship in the editing of school district reports onto the files. For example, there are two entries on the 1973 tape *for New York City!* (I can't see how even the federal government can overlook a second New York.) Georgia contains a "school district" named "CITY", and bearing OCR district code 2000037. It contains no children, but does contain *invalid* codes in some data fields.

3. The school suspension data collection format requires the matching of suspension figures reported on the 1973–74 reports to enrollments reported on the 1972–73 reports. It is obvious that the OCR *school code* was never designed for such matching across years. Since the grade structure of a school may change from one year to the next, even as simple a "split" as between elementary and secondary students requires that we match records school-by-school within the district. We found 15,308 individual schools which had the same U.S.O.E. (OCR) school code within district, but which bore different names in the two years. If even a small fraction of 15,308 were anything other than spelling or name changes, we will have very inaccurate elementary/secondary breakdowns. In 8 cases we found two schools within a district which had different U.S.O.E. school codes but bore the same name. These are almost certainly errors of an undetermined sort and our checking for this condition was not exhaustive.

4. There were 47 school *districts* which were present in the 1973–74 data but which were not present in the 1972–73 data. Some of these are doubtless trash records left on file from the contractor's incomplete editing in 1973–74 (and so no matching 1972–73 data were expected). However, there were 84 schools reporting suspensions among the 47 districts, so clearly some of these districts did exist in the previous school year.

5. It is possible that there are two distinct districts, both named Pleasant Grove, Oklahoma (U.S.O.E./OCR district codes 4624330 and 4624360) but *neither* has a matching 1972–73 record. (This condition rather overtaxed the editing capacities of our programs!)

6. Lastly, even the most elementary editing on the reported numbers (and days) suspended was not carried out. The districts reported figures for five ethnicities, plus total. Over a thousand districts had totals which exceeded the sum of the five detail counts (which is logically possible if ethnic classification was not established); but almost 100 districts gave totals that were *smaller* than the sum of the five details (and that is *not* logically possible).

The following is an expression of opinion. The conditions described above (and in technical detail below), may ultimately derive in some instances from faulty preparation of forms by local school districts although many are the typical result of keypunching errors. The essential point is that, regardless of their origin, they are the conditions which *any* reputable data processing contractor (a) detects in post-file-construction validity edits; (b) corrects immediately where keypunching or programming flaws are the demonstrable source; (c) notifies the client where source documents are suspect. Further, reputable work will include providing the client with editing and updating programs, check totals that balance to source document counts, and accurate doumentation. The fact that such conditions can be detected is demonstrated by the fact that we detected them. I cannot resist adding that OCR would have detected them, also, had they made routine provision to draw preliminary reports from all data bases immediately upon receipt from a contractor. Using the data prevents abusing the data.

I must add that the data processing staff of the Office of Civil Rights, and in particular, Ms. Barbara G. White of the Management Information Systems Branch, were very helpful and very competent. Indeed without their assistance, we might still be looking for another New York.

After our editing, we retained 2,862 school districts with 38,866 schools (in 1972–73), 20,618 of them reporting suspensions in 1973–74 for the school year 1972–73.

In order to be retained in our analysis, a district had to have data in each of the two reporting years, had to have real schools with non-zero enrollments (at least in 1972–73), and had to have its records unduplicated in either file. In each of the 652 districts where the numbers of schools or the grade structures of the schools had changed from 1972–73 to 1973–74, the district records were examined to see that there was no mismatch or other basic flaw in the data. We will doubtlessly have undercounted the number of suspensions, both because of the 84 schools with suspensions thrown out for lack of enrollment data, and because some schools with suspensions were closed in the subsequent year, and so filed no reports. It is reasonable to assume, also, that since disproportionately many of the ethnically unidentified students appear in large city reports (New York, Chicago, and Los Angeles) which contain higher than average concentrations of non-white students, we are also under-reporting the incidence of suspensions among non-white students.

In general, we have made use of only data as "clean" as possible (short of field reconfirmation of district reports), and have chosen to let the remaining biases understate the extent of suspensions among school children.

II. BASIC PROPERTIES OF THE DATASETS

1. DCB information: The correct DCB's that will allow in the 1972–73 data set (DSN=LDMSOUT) and the 1973–74 data set (DSN=LDMS73) are as follows:

```
DSN=LDMSOUT,
VOL=SER=045570,
DCB=(RECFM=VSB, LRECL=804, BLKSIZE=4024)
DSN=LDMS73,
VOL=SER=038799,
DCB=(RECFM=VSB, LRECL=804, BLKSIZE=3220)
```

The documentation supplied us gave a block size of 4024 for the 1973–74 data set, LDMS73, and is wrong. I don't know whether the reblocking took place when the tape was copied, or whether the actual data base file supplied by the contractor is also at 3220 bytes, but I suggest that OCR check before using it.

2. For both files, the documentation directory specifies that the records are in "alphabetical order by state" but that the school districts are in "no particular order" within a state. Based on a telephone call to OCR, we were assured that the districts were in "alphabetical order" within state. On both files the districts

are in strict ascending order by U.S.O.E. district code. The district code is a seven digit number whose first two digits indicate the state. There has been no editing on state name or district name in the data records, which are merely hand coded sections of the district's mailing address. Common sense requires that data file directories correctly describe the sequencing principle for a sequential data set. Without that information, we might have done several unnecesary (and very costly) full file sorts prior to matching across years. As it stands, the file contains many variant spellings for state names, and the district names are not necessarily those that would be used to sort to alphabetical order by district name within state.

At the very least, it ought to be possible to: (*a*) provide OCR with a correct description of the file sequence of the data base, and (*b*) edit the state names for consistency.

From other indications to be described later, I suspect that the contractor made no provision for deleting a district record. The fudging about the file sequence may have come about because the contractor had to process by U.S.O.E. district code in order to match his file, but when a district name change occurred, he had to leave the original sequence (which was, nearly alphabetical by district name within state) as it stood, since to reorder the file by the new names would destroy the U.S.O.E. sequence. An example of such a situation is Sierra Vista, Arizona, U.S.O.E. district code 1201463). It precedes, say, Cartwright, Arizona, U.S.O.E. 1201680 both in the actual file sequence, and in U.S.O.E. district code order, but not alphabetically. I suggest a very simple remedy. Let the contractor place another sequence number on the district headers, which will give the strict alphabetical order for district names. This will correspond to U.S.O.E. number in all but a few districts, primarily those which have undergone a name change, or which are newly assigned U.S.O.E. codes. This number would be used to sort to district name order (usually within state code), and it would avoid (as the current U.S.O.E. code usually does) the problem that the alphabetical district name on file is not the correct one for sorting. An example of the latter difficulty is, say,

Sort order desired	Actual name on file	USOE district code
Gateway Borough, Alaska	Gateway Borough	1100150
Greater Anchorage Borough	Greater Anchorage	1100180
Greater Sitka Borough	Greater Sitka	1100240

Note that the current U.S.O.E. district code gets the alphabetical order correct, while the actual name on file would place GRE ahead of GTR if sorted blindly. Since the assignment of unique alphabetical sequence numbers for district name would have to take place only once per district (not once per year) except when name changes occurred, and since the current U.S.O.E. code provides a good sequence for all except a tiny fraction of the districts, the idea might be practical. It would, of course, pay for itself many times over since all alphabetical reports by district could sort on the four bytes of numeric data instead of 32 bytes of alphabetically coded district name. And the contractor could continue to process in U.S.O.E. code order, making district name changes without resequencing the file. The cost to the contractor would be the programming needed to detect when a district name change occurred, so that a new alphabetical sort sequence number could be assigned—but then he ought to have been monitoring that right along.

3. My copy of the Directory prepared by the OCR contractor gives a "baby talk" walking tour through the wonders of a field-coded replacement-values-only data structure. It was a bit skimpy in offering warnings that trash district header records had been left in the file, and that these records did not contain all the necessary replacement values to, at least, zero out the data from the preceeding district's records. My personal favorite was U.S.O.E. code 2000037, district name "CITY" in Georgia, from the 1972–73 data base. In this instance, OCR might be better off in getting the contractor to make his file resemble his documentation, rather than the reverse. I suspect that "CITY" was a keypunch error for data meant for Americus City, Georgia, but I have no way of being sure. In any case, is there any possible reason why the contractor cannot prohibit incomplete district headers from going on file?

III. DATA STRUCTURE

1. There are some district records which are in such disarray that it is impossible to know what happened. The best that I can do is to describe what is on file in each of the two years.

"City", Georgia, U.S.O.E. code 2000037. Present on the 1972–73 file, with no matching U.S.O.E. code on the 1973–74 file. The district contains no school records, and its header is incomplete.

Fairfield Township, N.J., U.S.O.E. code 4005010 and

Fairfield Township, N.J., U.S.O.E. code 4005040 are both present on the 1973–74 file, with no match by U.S.O.E. code to the 1972–73 file, and both contain two school records.

New York City, N.Y., U.S.O., code 4220580 and

New York City, N.Y., U.S.O.E. code 4222580. The first New York City is the real one, and it is present on both files. The second New York City has no schools and is present only on the 1972–73 file. It was the "coincidence" of the digit error in the U.S.O.E. code which suggested to me that the contractor has trouble (a) keypunching and (b) deleting faulty records from the file.

Pleasant Grove, Okla., U.S.O.E. code 4624330 and

Pleasant Grove, Okla., U.S.O.E. code 4624360. These are both present on the 1973–74 file, and neither is present on the 1972–73 file. But the school data for these two districts are different, the first having one school and the second two schools.

My guess is that "CITY" Georgia, and the second New York are trash records, while the other two cases are erroneous duplications in some stage of completion. Has OCR considered establishing check counts of the number of districts (and perhaps even the number of schools) to which the contractor is expected to prove?

2. The next list of districts that I provide shows those districts that did have schools reporting in 1973–74, but which weren't on the 1972–73 file (that is, the whole district was missing in 1972–73). There is a good possibility that these districts are all legitimate, and are either newly created or reporting for the first time. I have no way to check further on the validity of the data for these districts (we dropped them from our report), and I merely provide the list for OCR's use:

1001690	Guntersville City, Alabama.
1001710	Hale County, Alabama.
1002360	Midfield, Alabama.
1003510	Wilcox County, Alabama.
1201463	Sierra Vista, Arizona.
1204973	Mesa, Arizona.
1308670	Lakeside, Arkansas.
1409083	Coachelle Valley, California.
1416500	Hanford Joint Union, California.
1505130	East Otero, Colorado.
2603540	Atchison, Kansas.
3604440	Box Elder, Montana.
3605033	Brockton, Montana.
3605160	Browning, Montana.
4018150	Woodbury, New Jersey.
4100240	Bloomfield, New Mexico.
4100420	Chama Valley, New Mexico.
4100810	Dulce, New Mexico.
4101230	Hatch Valley, New Mexico.
4101530	Las Vegas City, New Mexico.
4101860	Mora, New Mexico.
4102040	Penasco, New Mexico.
4102160	Questa, New Mexico.
4102400	Santa Rosa, New Mexico.
4302560	Lee County, North Carolina.[1]
4604980	Boley, Oklahoma.
4606060	Byng, Oklahoma.
4609780	Dewar, Oklahoma.
4613920	Hartshorne, Oklahoma.
4625050	Preston, Oklahoma.
4625200	Pryor, Oklahoma.
4626730	Salina, Oklahoma.

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[1] I do have some difficulty believing that Lee County, N.C. is either a new district, or has first attracted the attention of OCR in 1973–74.

4628710	Stilwell, Oklahoma.
4632220	Weleetka, Oklahoma.
5139540	Andes Central, South Dakota.
5175420	East Charles Mix, South Dakota.
5312640	Cameron, Texas.
5326610	Lamesa, Texas.
5328620	Lyford, Texas.
5334410	Pawnee, Texas.
5338820	San Diego, Texas.
5701920	Cusick, Washington.

3. Because the data base for 1972–73 contained many districts added for that year only as part of special studies, I did *not* draw off the corresponding list of districts that did have 1972–73 records, but which did not have 1973–74 records. There were 5,194 districts that fell into this category. Of course, among these 5,194 are some which ought to have reported in 1973–74, but did not. In addition, there are surely some which will "match" by name (not by U.S.O.E. code) to some of our problem districts already listed. Since we had about two weeks and a budget of under $600 for our whole report, something had to give—and the scan of these 5,194 districts for individual discrepancies was what gave.

4. We now come to the problem of matching schools within districts across years. I will first describe the problem. Each school record contains a school code that is assigned by the contractor each year. The documentation makes no promises that these codes have any connection from year to year. Based on a telephone call to OCR, we assumed that the school codes usually were the same from year to year (with 5 or 10 percent errors). We found that 15,308 school records carried the same school code number (within district) but had a differently spelled school campus name. Obviously most of these must be just nominal changes in spellings or abbreviations. Nonetheless, even a small percentage of true mismatches would, of course, throw off our split between elementary and secondary totals, although it would have no real effect upon our district totals.

We also found 8 schools which had the *same* name but which had different school code numbers in the two years. Further, our scan for this condition was strictly limited, and there is no way that I can guess how many times the condition occurred, but remained undetected by our programs. (In other words, we didn't read back and forth over the whole district list of schools looking for a name match when we found a code match failure; we only looked ahead or back one school.)

I have one other clue to present. There were 228 districts which had exactly the same number of schools in 1973–74 as in 1972–73, but where the school codes did not match for one or more schools. For these districts, the codes failed to match for 599 out of 3,110 individual schools, or a failure rate of 19.2 percent. That is just too high to be an occasional replacement campus or similar small change.

For our purpose, since we can trust the district totals, even if not the elementary/secondary breakdown, the problem is only a nuisance. But doesn't OCR ever study school-by-school changes in the racial composition (say) within districts? How do you carry out these studies with accuracy?

At the very least, the contractor should provide a "logic" edit to control the coding of school codes. Each school campus report ought to specify whether or not it is a new campus this year. If it is not, then the edit programs should force it to match an existing school campus record for that district by name, or issue a warning if it does not. The edit program should also "balance" the numbers of schools from year to year, so that discrepancies could be detected—including failures to report previously existing schools. Notice that this procedure only requires very minor modifications to the reporting forms, since data on new campuses are gathered now. The edit programs would have to be new, since it is obvious that nothing resembling control over school campus identification exists today.

In case OCR contractors argue that it is impossible to match hand coded names because of the extensive variations in spelling and abbreviations that we non-electronic humans use, I offer the following. Every direct mail house has a "duplicate name finding" scan program routinely used to purge duplicate names from consolidated mailing lists, and school buildings are named for real people in the vast majority of districts. Such programs operate in two stages. In the first stage the program uses the duplicate name algorithm to "guess" which names input match names on file, and prints out a list of its matches (actually, only of its matches where the match was less than perfect, or nearly perfect).[2] People—who are still much better than computers at this task—just scan the computer's matching to see where they disagree. The second stage receives input coded only for those cases where the human scanners disagreed with the computer's tentative match-ups, and the input overrides the computer's assignments. The rest of the assignments go through as the computer first suggested. Of course, the programs do not just match letter-by-letter (as ours did due to lack of time), but first purge all expected abbreviations (EL, ELEM, SCH, SCHOOL, HS, GRADE, etc.) and then matches "by length in order with skips allowed", for example:

Thomas Alva Edison
T A Edison
Thomas A Edison
T Edison
TA Edison
Edison Falls
Thomas

Are all allowed matches, with the last two obviously doubtful to a human, but not to a computer. The 5th, TA EDISON might be flagged by the computer as suspicious, although to a human it is an obviously allowed variant.

In summary, I have no idea whether OCR wants to improve the school-by-school matching, but it can be done. Although, unlike the other suggestions that I make, this one does have real and perhaps substantial costs attached (for the clerical scanning—the computer passes are very cheap.)

IV. INPUT FIELD VALIDITY CHECKING

1. The actual numbers on file for schools can err (or appear to err) for three reasons:

(*a*) The district just made a mistake.

(*b*) The contractor made keypunching errors, and either is not verifying or is allowing his verify operators to "red button" by a mismatch rather than to pull and repunch the data.

(*c*) Some very unusual conditions occurring in the local district has resulted in the district coding (to the best of its ability, correctly) very odd figures. This is usually a case where the forms were just not flexible enough to cover the local circumstances, and is quite understandable.

It is important to OCR that they know—or at least have a chance to know, what happened in each instance. In some cases they may wish to have the local district correct the return, in some instances OCR may itself choose to "fix" the data, and in some instances OCR may want to leave the anomolies just as they are, but be in a position to recognize them later (and even inform helpless innocents like CDF about their existence). Some anomolies may attract field office attention from their very nature—for instance, Los Angeles' total absence of any suspensions. In any case, OCR has a right to be present as these conditions are handled, and that requires that the contractor produce a post-file creation validity edit for all testable fields on the data base.

2. I will list the kinds of anomolies that we detected among the very small proportion of the data fields that we used in our report.

(*a*) Some districts coded total numbers of students suspended at least once, and *total* number of suspension days that were *less* than the sum of the detail for the five ethnically distinguished groups. It is logically possible for the total to exceed the sum of the detail (and it certainly does, often enough) when some suspensions have occurred among ethnically unidentified students. But there is no logical way for the opposite to happen.

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[2] OCR has school campus addresses as well as names, so the actual failure-to-match-correctly rate will be very low. Scanning a correctly matched school will surely take under 15 seconds per school. That means 40,000 schools can be scanned in 180 clerical man/hours, or for a cost of under $1,000. Assuming a 5 percent miss-match rate, and 5 minutes per input correction (both way too high) another 180 hours and $1,000 will make the corrections. That is roughly $2,000 for the whole job annually, and doesn't count the intellectual stimulation to the OCR contractor gained in doing something right for a change.

(*b*) It is logically possible for the number of students suspended at least once to exceed the number of students enrolled in October (many more students enroll during the year, and old and new are suspended with gay abandon during the year). But it is *very* difficult for me to believe that Spanish Surnamed students in Columbia County, Georgia; American Indian students in Memphis, Tennessee and Berkeley County, South Carolina; and American Asian students in Cairo, Illinois were all suspended at the rates indicated. Obviously, OCR needs a listing of such discrepancies, since the action to be taken in each case is a matter for judgment and perhaps field investigation.

(*c*) It is also the case that OCR ought to receive discrepancy lists for districts that leave the ethnic composition of their suspensions largely unidentified: Phoenix Union High, Arizona; Bardstown, Kentucky; Baltimore City, Maryland; Downe Township, New Jersey; Roselle, New Jersey; Cumberland County, North Carolina; Philadelphia, Pennsylvania; Chicago, Illinois; Willingboro, New Jersey; North Bergen, New Jersey; Mount Healthy City, Ohio; New York City, (the first), New York; Waterbury, Connecticut; Peoria, Illinois; Rudyard, Michigan; and Rochester, New York. All left more than 75 percent of their suspensions ethnically unidentified. It would certainly also be of value to pick out those districts with unusually low numbers of suspended students (like Los Angeles, California, with none) if only for praise (if merited).

Of course, the same kinds of validity reviews can be defined for most of the other fields in the data base. The cost of scanning the new files for discrepancies is very small, and the value to OCR is quite high.

The procedure that CDF used in its report, namely listing the 20 worst districts for a variety of test quantities, is a very simple and effective way of monitoring the condition of fields on file, as well as an excellent first look at the kind and scope of real conditions (once the keypunch errors have been corrected).

CHILDREN'S DEFENSE FUND,
THE WASHINGTON RESEARCH PROJECT, INC.,
Cambridge, Mass., February 14, 1975.

PETER HOLMES,
Director, Office of Civil Rights, Department of Health, Education, and Welfare, Washington, D.C.

DEAR PETER: On December 19, 1974, we presented a letter to you regarding our findings on children out of school in America. We discussed specifically the great racial disparities in suspension rates which we found in our analysis of OCR suspension data and in our own survey data. We urged OCR (1) to draft and disseminate a specific compliance policy under Title VI of the Civil Rights Act of 1964 outlawing racial discrimination in disciplinary practices and (2) to design a specific compliance program in order to prevent and correct racial discrimination in school disciplinary practices. We set forth five specific tests OCR might adopt to achieve this latter goal. Three of these tests were statistical: (1) the Chi Square test; (2) the differential proportions test; and (3) the frequency test for schools within districts. We promised to prepare and forward to you our analysis of how these statistical tests would in fact operate. This letter is the result of our application of the various proposed tests to 15 school districts in the state of Connecticut.

Statistical tests alone cannot "prove" that a disparity in suspension rates is due to unjustified racial discrimination (though OCR could create an irrebutable presumption at certain levels). What they can do is rule out as highly improbable *some* "innocent" explanations of apparent bias. The tests we propose are designed primarily to indicate which districts do *not* show evidence of racial discrimination: suspension rate disparities are explainable in terms of "innocent" factors susch as the small size of the district or the relative infrequency of suspensions. Since OCR's resources are limited, eliminating districts for which such "innocent" explanations are tenable will allow more and more extensive reviews of the remaining districts.[1]

Our proposed tests are very conservative. Nevertheless, our Connecticut example illustrates that more districts will show a prima facie case of racial discrimination that OCR could adequately review. That is not a "fault" of the tests.

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[1] Our tests show that an "innocent" explanation may exist not that it in fact does exist. It would not be legitimate to conclude that a district not selected for further review is proved to be free of racial discrimination in suspension practices. However, we believe that a uniform and clear OCR policy combined with procedures for parents to complain will adequately cover these districts. Moreover, neither our tests, nor any statistical tests, require OCR to set aside any prior or external information which it may have respecting racial conditions in local districts.

It is rather a dramatic illustration of the extent of the racial problem in suspensions. Shifting the burden of proof to districts who meet the prima facie statistical tests for racial discrimination is crucial therefore to an effective compliance program.[2]

We recommend stratification of districts by size of enrollment: Large districts with enrollments over 15,000 students; medium districts with enrollments between 5,000 and 15,000 students; and small districts with enrollments under 5,000 students.[3] This will help OCR acquire information about the problems of enforcement across a reasonable spectrum of districts.

APPLICATION OF OUR PROPOSED TESTS: 15 DISTRICTS IN CONNECTICUT

We examined 15 Connecticut school districts with data available on the 1972–73 and 1973–74 data sets for suspensions during the 1972–73 school year. Connecticut was not selected because it showed severe suspension problems. It was selected because it was typical in the variety of problems it presents although only 15 districts reported to OCR. Since black student suspension rates display larger and more pervasive disparities vis-a-vis majority student suspension rates, and were enrolled in relatively large numbers in all 15 districts, we applied our tests only to black and white suspension rates.[4]

Table I shows the total enrollments of the 15 districts, the number of students enrolled in October, 1972, the number of students suspended during 1972–73, for white, black, other (including Spanish Surnamed American, American Indian, and Asian American students), and the total for each district.[5]

I. THE CHI SQUARE TEST

A. *Purpose.*—If we consider a hypothetical district in which white and black students in fact had exactly equal probabilities of being suspended, there would still be small chance fluctuations in the proportions of white and black enrollments suspended. Equal probabilities of suspensions are compatible with small variations in the actual ratios suspended. Stated simply, if we had a jar containing 90 percent blue candies and 10 percent green candies, in ten candies drawn from the jar strictly at random, we would not be surprised to find either no green candies or two or three green candies in the 10. If the differences between white and black suspension rates within a real district were so slight as to be explicable by just such small chance fluctuations then it would not be reasonable to conclude that the real disparity was itself prima facie evidence of racial discrimination.

The Chi Square test insures that no district is selected for review if the racial disparity in suspension rates is reasonbaly compatible with such chance flunctions. The test does not prove that such disparities are in fact due to chance fluctuations.

B. *How Chi Square Works.*—Chi Square's initial hypothesis, called the "null hypothesis", is one of equality, i.e., suspensions within a school district are carried out in a manner that white and black students have equal probabilities of suspension. It then calculates the likelihood that an observed disparity in suspension rates could have appeared in a district with equal probabilities of suspensions for blacks and whites. When the likelihood is small, for example, less than 1 in 20 by our proposed standard, we can say that the disparity is unlikely to have resulted from chance fluctuations of equal suspension rates. When the likelihood is not small, more than 1 in 20, we can conclude that the observed disparity in suspension rates is compatible with chance fluctuations.[6]

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[2] OCR should select a smaller group of the most egregious districts for field reviews. This does not mean that no action can be taken before a review. Use of the followup survey we proposed earlier might be an appropriate step to take short of selected field visits. While the rankings and measures our tests provide may be useful in determining priorities, their use in decisions for onsite reviews cannot be determnative. Available resources and problems encountered when such reviews are mounted would have to be considered as would other information OCR may have about a district beyond the survey. Statistics are only an aid to and not a substitute for human judgment.

[3] It would be reasonable to hold giant (over 200,000 metropolitan districts by themselves because of the time commitments that their review would entail. There are 8 such districts containing approximately 20% of the minority student population. OCR may also wish to review districts separately by states grouped according to regional offices, since both the resources available to each regional office and the type of suspension practices encountered vary.

[4] Similar calculations would have to be made for each distinct minority group for which OCR collects data.

[5] Accurate ethnic reports are essential. Using the school district data we apply (1) the Chi Square test; (2) the differential proportion tests (DPT); (3) the frequency tests (FT) for schools within districts; and (4) ranking tests for determining relative severity among districts for whom a prima facie case of racial discrimination has been established. Some districts did not give ethnic identification for some of the students that they suspended. The number of students whch the district reported as suspended at least once, but for which the district did not supply an ethnic identification, is shown in the column labelled "unidentified." It will be important in applying our formulae to recall that "unidentified" suspensions do exist necessitating slightly different methods of calculation.

We suggested Chi Square because legal precedent for its use exists. (See page 7 of our letter to you of December 19, 1974.) But there are other statistical tests which could perform the task of determining a prima facie case of racial discrimination equally well.

C. *Chi Square Calculations.*—Chi Square involves five steps.[7] (1) Arranging the relevant data from the district for which the calculation is to be made.

The reference value that we propose be used is the one which would be exceeded by chance in data from a non-discriminating district only one time in twenty. This reference level is alternatively known as "the .05 level of significance" and as the "5-percent rejection region"; both are merely different ways of saying that non-discriminating districts will exceed this reference value by chance only one time in twenty.

Detailed statistical descriptions of the theory of Chi Square testing can be found in Kendall and Stuart (1967), chapter 33, volume II (reference (1)). Detailed descriptions of the distributional theory from which the values for the reference levels were selected can be found in Lancaster, chapter 11, reference (2); this citation also contains extensive material defining the power and performance characteristics of Chi Square tests in 2 by 2 tables, a small portion of which was used to develop the warnings offered in our section on calculation.

(2) Making sure that the expected values of numbers suspended are not so low as to threaten the test's validity.

(3) Applying the formula for the Chi Square value to the district data as arranged in step (1).

(4) Comparing the calculated Chi Square value to the reference level defining the .05 level of significance and concluding that a prima facie case of discrimination exists if the calculated value exceeds the reference level.

(5) After calculating and comparing the Chi Square values for all the districts in a set (the nation, an enforcement region, a state, etc.), checking to insure that the reference level (the .05 level of significance we propose) is operating conservatively despite the number of such tests carried out for all the districts in the set.

1. ARRANGING THE DATA FOR CALCULATION

For each district, the data from the Annual Civil Rights Survey Report should be arranged in the two-column by two-row format shown in Table II attached.

The only numbers entering the tabular array are those for either the white (majority) students or the black (minority) students. Black suspension rates are not compared to pooled suspension rates for other minority groups because a district ought not be allowed to justify suspending black students beyond white rates because it also suspends Spanish surnamed students beyond white rates. Thus each minority group should be compared separately to the majority rates.

2. CHECKING EXPECTED VALUES BY COCHRAN'S RULE

The Chi Square reference value that we employ is an approximation to the exact value. Districts with very few students or with very low suspension rates may produce calculated Chi Square values for which the approximation is inaccurate. Cochran, reference (3), p. 417 et seq. shows that two simple restrictions will insure the approximation's accuracy. We recommend that both restrictions be used, and in a form somewhat stronger than Cochran proposed, so that no dispute regarding the accuracy of the approximation may arise:

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[6] In order to ascertain the likelihood of chance fluctuations as a compatible explanation for observed disparities in suspension rates, we compute a number, called the Chi Square value. This number can range from zero upward without limit. We then compare the calculated Chi Square value to a reference value set by statistical theory. If our observed Chi Square value exceeds the reference level, then we conclude that the observed disparities are "significantly" different from those that might be brought about by chance fluctuations. The word "significant" is used here in its statistical sense, which roughly, means "improbable" and does not have its usual meaning of "important".

[7] Each step is described in order, and some brief explanation is offered as to why each step is needed to insure that inferential validity is maintained. We show the calculations both in symbolic formulae and with real data from Stratford, Conn.

First, Chi Square should not be applied to any district with fewer than 50 students (Cochran proposed 40) in the combined sum of the majority and minority enrollment (white and black enrollment in our Stratford example, n_{++} in general). Since the enrollment of whites and blacks combined is 9,670 in Stratford, over 40, the first restriction is inapplicable. In fact, it will apply to no district in Connecticut and to only a handful in the nation. It must nevertheless be checked to insure the soundness of the inference of prima facie discrimination.

The second restriction requires some calculation. For each of the four cells in the body of the data array shown in Table II, we define an "expected value", m_{ij} (That is m_{ij} is the expected value for the cell in the ith row and the jth column of the array, where i and j can range over 1 and 2.)

$$m_{ij} = \frac{(n_{i+} n_{+j})}{n_{++}}$$

Table III shows the expected values calculated for each of the four cells in the Stratford table. The expected values are the number of students who would have been suspended, or not suspended, if both the number of students and the number of suspensions had been exactly equal and the district had in fact suspended black and white students at equal rates. In Stratford, the expected number of suspensions (under exactly equal rates) for white students is higher than the actual number of suspensions observed, while the expected value for the number of suspensions for black students is lower than the number observed.

Cochran's second restriction is that Chi Square should not be calculated for any district where the smallest of the four expected values does not exceed 10 (Cochran recommended 5). Since the lowest expected value in the Stratford data is 56.6, which exceeds 10, the second restriction does not apply. In Connecticut, the second restriction will apply to no district, and it will apply to only a handful of districts across the country. But as with the first restriction, it should be checked to insure the soundness of the inference of prima facie discrimination.[8]

In sum, these restrictions are meant to avoid singling out a district for further review when the statistical procedures might overestimate the extent of the discrimination in that district. They are not meant to imply that very small districts cannot discriminate but merely insure that the statistical procedures are applied where accuracy is verifiable.

3. APPLYING THE CHI SQUARE FORMULA

The calculated value of Chi Square, X^2, will be:

$$X^2 = \frac{n_{++}(\left| n_{12} n_{21} - n_{11} n_{22} \right| - 1/2\ n_{++})^2}{n_{1+} n_{2+} n_{+1} n_{+2}}$$

Vertical bars indicate that the positive absolute difference should be used. When the quantity within bars is negative, it indicates discrimination against white students in favor of minority students is being tested. While this "reverse" discrimination will not appear frequently, it must be treated exactly as the more common situation of discrimination against minority group students. However, no statistically significant discrimination exists against white students if any of our 15 Connecticut districts. Thus, applying the formula above to Stratford's data, we have:[9]

$$\begin{aligned} X^2 &= 9670 \cdot (78 \cdot 8268 - 679 \cdot 645 - 1/2\ 9670)^2 \\ &= 9670 \cdot (644904 - 437955 - 4835)^2 \\ &= 9670 \cdot (202114)^2 \\ &= \frac{395020167191320}{43645102791021} \\ &= 9.05 \end{aligned}$$

The Chi Square value for Stratford is 9.05.

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[8] For nonblack minority group students, both restrictions will come into play more frequently. They constitute small numbers in many districts. When either restriction does apply, OCR has two choices. It can conclude that the number of students in a district is too small to use statistical procedures for a prima facie finding or review. Or OCR can use Fisher's exact test (see Kendall and Stuart, pp. 550-552), which does not depend upon any approximation in setting reference levels.

[9] This formula uses Yates' correction for continuity by subtraction within the squared term in the numerator of the quantity $1/2\ n_{++}$. This correction is required whenever a

4. COMPARING THE CALCULATED CHI SQUARE TO THE REFERENCE LEVEL

The calculated Chi Square value is compared to the following reference levels:

	(Significance)	Reference level
Likelihood of observing a value as high or higher from chance variations:		
1 in 1,000	0.001	10.83
1 in 100	.01	6.64
1 in 20	.05	3.84
1 in 10	.1	2.71

The greater the district's disparity from explainable chance variations, the greater its calculated Chi Square value. When the calculated Chi Square value exceeds a reference level, we can therefore conclude that the observed disparities in suspension rates are significant at the exceeded level.

In our example district, Stratford, Connecticut, the calculated Chi Square value is 9.05 which exceeds the .05 or 1 in 20 level of significance we recommend. Indeed, the observed Chi Square value exceeds a one-in-a-hundred level and almost reaches a one-in-a-thousand reference level. Yet of all the districts in Connecticut which show statistically significant amounts of discrimination, Stratford has the lowest calculated Chi Square value. Every other Connecticut district which displays a prima facie case of discrimination does so at a level higher than the one-in-a-thousand reference level.

Table IV shows the calculated Chi Square values for all 15 of the Connecticut districts reporting to OCR. Three of the districts, West Haven, Meriden, and Ansonia, are clearly shown to have disparities in suspension rates consistent with chance variations among equal probabilities of black and white suspensions. The remaining 12 districts are clearly shown to have prima facie racially discriminatory patterns in their suspension rates. As conservative as our reference level is, this determination does not depend upon using our 1 in 20 reference level as a criterion. The determination would have been the same if the 1-in-a-hundred level were used. If the 1-in-a-thousand level were used, only Stratford would not exceed the mark.[10]

That the choice of reference level has little effect on the determination of the selected districts is because Chi Square's ability to distinguish sharply between discriminating and non-discriminating districts is very great when the districts have several thousand enrolled students as most districts do. Moreover, Chi Square metaphorically obeys the Biblical injunction to let its "Aye be aye, nay be nay". Any reasonable choice of reference level will select more districts for possible subsequent review than OCR can handle. That is because the discriminating districts are discriminating so severely that no possible "random" explanations exist for the observed disparities in their suspension rates, regardless of the conservativeness of the selected reference level. These considerations should alleviate any OCR reticence to demand that the districts justify such disparities.

5. CHECKING FOR A CONSERVATIVE REFERENCE LEVEL

A logical though not practical possibility exists that the reference level was set too low. There *is* a 1 in 20 likelihood that a non-discriminating district will

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district "fixes" the number of suspensions in advance, for example, by having a policy of suspending no more than 10 percent of its student body. Most districts do not, in fact, establish any such limitation on the number of suspensions. As Plackett (1964, reference ([illegible])) has shown, the correction is only needed whenever such a district policy exists. Since the effect of making the correction when it is not needed, for districts which do not limit their number of suspensions, is to make the test even more conservative, we recommend its use in every case. There is nothing in the Civil Rights Survey to indicate whether a limit on the number of students suspended exists for a district. Yates' correction was established in Yates (reference (5)) and further corrections, which are not needed in our case, are discussed in Fisher and Yates (pp. 4–8, reference (6)).

[10] OCR might decide not to review 1-in-20 districts until the districts with the greatest disparities have been reviewed. Indeed, Stratford would not be reached until reviews have been made in the 12 districts that exceeded the 1-in-a-thousand level even though it exceeds the 1-in-a-hundred level. The reference levels shown above were taken from Table 6–12 of Meredith (reference (7)), but are widely available. In all cases the reference levels are those for two-by-two arrays of data, and thus correspond to a single degree of freedom.

show a pattern of disparity (through chance fluctuations) as high as the reference level. In a very large sample of completely fair districts, 5 percent of them would be selected for review if the .05 reference level were used. To be sure that the reference level has been set sufficiently high, OCR should always determine that the number of districts selected exceeds the reference level proportion of the number of districts tested by a substantial amount. For example, we tested 15 districts in Connecticut, using the .05 reference level. Five percent (the reference level) of 15 districts is less than one district, yet we observed 12 districts which exceeded the .05 reference level. Thus we selected substantially more districts than the reference level proportion of the number of districts tested. But, had we, for example, selected only two or three districts out of 15, using the .05 reference level, then we would shift to a higher reference level—perhaps the .01 or even .001 levels.

While this check should be made to preserve the validity of the inference of prima facie discrimination when carrying out multiple Chi Square tests on a number of districts, in practice, as the case of Connecticut shows, there will be no need for an upward adjustment in the choice of reference level because the degree of discrimination is so great and the proportion of districts discriminating is so large.

D. *The Problem of Ethnically Unidentified Suspensions.*—Only two of the 15 districts in Connecticut failed to give ethnic identification for all of their suspended students. However, the problem occurs frequently enough throughout OCR's survey to be worth noting. This is especially important because some of the giant districts like New York City and Chicago, with large numbers of suspensions, failed to provide complete data.

Conceivably, though unlikely, the ethnically unidentified students may come disproportionately from the ethnic group with the lower suspension rate. The district may therefore be less discriminatory than would appear from their report. But OCR should not reward districts that submit incomplete returns by omitting those with incomplete data from compliance reviews. This will constitute mere license not to report accurately. We propose that the Chi Square test be applied only to the ethnically categorized suspensions from districts with incomplete data. We also propose that any district that leaves a substantial proportion of its suspensions incompletely reported be singled out for review, regardless of the results of statistical tests. However, such districts should be invited to complete their returns within a time certain before the review decision is finalized.

We cannot stress enough the importance of making districts understand that failure to report completely or accurately is not to their advantage and that persistent or extensive under-reporting that we know now from our CDF survey occurs, is going to be investigated.[11]

E. *Districts That May Be Cheating: Low Chi Square Values.*—Chi Square has a less common use. Districts may file reports in which minority-majority suspension rates are so equal that they are inconsistent with random fluctuations. Chi Square's accuracy as an inferential procedure is not very great when used to discover improbably "equal" suspension rates since it ignores the fact that only whole numbers are reported. Even cheating districts will "round" their calculated figures to the nearest whole number of students. However, very low Chi Square values, for example, values less than 0.01, ought to be inspected further, by a simple procedure.

In Connecticut we have one district, Ansonia, which has a calculated Chi Square value of only 0.00783. Ansonia reported suspending 188 out of 3,888 enrolled students. That gives an overall suspension rate of 188/3,888—4.8354 percent. Ansonia also reported that their total enrollment was made up of 3,346 white students, 514 black students and 28 other students. If we compare the actual numbers reported suspended to those that would have been calculated by a cheating district which merely applied its overall suspension rate to the total enrollments for each ethnicity separately, we would find:

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[11] For example, Hayes, Mizell, until December 1974, a school board member in Richland County No. 1, South Carolina notes a disparity between the number of suspensions reported to OCR and those reported to the School Board, Baltimore reported no suspensions of less than 10 days to you.

	Total	White	Black	Other
Number enrolled	3,888	3,346	514	28
Calculated by applying the overall rate to each group calculations carried to 3 decimal places	188	161.792	24.854	1.354
Calculated figures rounded down for minorities, with the white figures adjusted to add up to the total	188	163	24	1
Ansonia's reported number suspended by ethnic groups	188	163	24	

That the calculated number of suspended students equal the actual numbers reported by Ansonia does not constitute a prima facie case of cheating. Exact or even approximate likelihoods cannot be easily calculated when rounding is taken into consideration (as it need not be in the case of honest districts faithfully reporting children who really do come in whole number quantities). But if the simple calculations outlined above are carried out, and match the district's reported numbers, it would centainly seem reasonable to inquire into the source of the reported numbers.

This procedure will not catch sophisticated cheaters. On the other hand, if OCR's inquiries into false statements on the Annual Survey reports become common knowledge, it might make even sophisticated cheaters consider whether they would like to present substantiation for their reports at a compliance hearing. Methods to detect a substantial proportion of sophisticated cheaters exists, but in our view should not be published in order to avoid reducing their efficacy.[12]

F. *Chi Square as a Priority Ranking Device for OCR Follow-Up Review.*—So far, we have been discussing establishment of a prima facie case of discrimination sufficient to shift the burden of proof to school districts to disprove racial discrimination. Additionally, OCR is going to need to set priorities for its own selected follow-up investigation of districts showng a prima facie case of racial discrimination. In Connecticut, not a state where the suspension problem is most severe, 12 out of the 15 reporting districts met the prima facie test using Chi Square. An 80 percent selection rate, if duplicated everywhere else, could call for about 2,400 field investigations per year by the Office of Civil Rights. Since that level of effort is clearly burdensome, the importance of having clear policies and standards for districts to judge and to correct their own practices is crucial. We would hope that many will move to do so voluntarily. All should be asked in the first instance to explain or justify such disparities under our proposed tests where they exist. Follow-up information should be sought. Those without adequate explanations should be required to take immediate remediative steps. It is from this pool of districts that OCR must decide which ones to pursue further.

How then should OCR select districts for follow-up investigations? Would the ranking established by the calculated Chi Square value be a reasonable method of setting priorities? For example, should OCR go first to Norwalk, because its calculated Chi Square value was 958.101, higher than any other district in Connecticut assuming no convincing explanation and remediative steps from them? We think not for the following reasons.

1. The calculated value is predicated on the assumption of the "null hypothesis" that the district was not discriminating. The higher the value, the less likely that the "null hypothesis" was true. It is not reasonable to conclude from the same data that a hypothesis is untrue and that calculations predicated upon its truth are valid administrative decision tools. Once it is concluded that a district meets a prima facie case of discrimination, Chi Square value should be put aside.

2. The Chi Square value is not a "transparent" number enabling the statistically untrained to intuitively grasp its relevance and implications. An enforcement policy at the review level should be based upon criteria that most school officials and citizens will understand. Chi Square serves to insure that no district with an available "innocent" explanation is selected for review. Choosing which of the selected districts to pursue further with field investigations ought to include measures or criteria that blend readily with prior or collateral infor-

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[12] Title VI regulations clearly forbid intentional falsification of reports.

mation about the districts such as the kind of response the districts make upon notification of a prima facie showing and the kinds of due process procedures in force, etc.

3. Chi Square has one unattractive property as a ranking tool. Of two districts with identical black and white suspension rates and with identical total enrollments, the Chi Square value will be slightly higher for the more integrated district (i.e., for the district which nears a 50/50 split in enrollment). This is because Chi Square only answers its primary question of the likelihood of observing a disparity in rates. That likelihood is smaller when both groups are of equal size rather than one being very small. That is correct for the purpose for which we propose its use—establishing a prima facie case—but would be unattractive as a ranking measure.

4. There are more suitable measures for setting investigative priorities as we later recommend.

II. THE DIFFERENTIAL PROPORTIONS TEST (DPT)

A. *Purpose.*—Chi Square serves to remove from further review districts that display disparate racial suspension rates consistent with random departures from equality. It would also be reasonable to exclude those districts which did show slightly statistically different racial suspension rates that might be explained by systematic, i.e., non-random, but relatively minor and varied causes.

For example, black children might attend school more frequently than white children, and thus have slightly more opportunities for committing an infraction of school rules than white children. Or the black student population might contain a slightly higher proportion of males, and males might be more likely to violate school rules more frequently than females. While we do not intend to prove that such innocent explanations are in fact the true explanations for racial disparities in suspension rates, we wish to eliminate from further OCR review districts which may provide such an excuse. These explanations should be forthcoming from the district once a prima facie case is established.

The purpose of the differential proportions test is to make the prima facie examination even more conservative than the Chi Square test itself. DPT will insure that only those districts with a substantial and systematic pattern of racial disparity will be identified as meeting a prima facie case of discrimination.

B. *How DPT Works.*—Since OCR already uses this test, we will not belabor the procedure. It simply compares the percentage of suspended students who are minority to the percentage of enrolled students who are minority. If the percentage of the suspended students who are minority exceeds by a certain amount which we have established according to district size, the district is presumed to be engaging in racial discrimination until shown otherwise.

It is important to note two aspects of DPT. First, it is not a probablistic test and does not use any assumptions regarding statistical distributions or random processes. Second, it is not recognized measure in classical statistical inference and has no theoretical rationale apart from OCR's own experience with it. But DPT behaves like most classical measures of the strength of an association in that it is equal to zero in a non-discriminating district and reaches a maximum of 100 percent in a district with very few minority students yet where only minority students are suspended.

C. *Calculation of the DPT.*—Using Stratford's data again as set forth in Table II and involving only black and white students, we took four steps:

1. The data for the district is arranged as in Table II.

2. We checked to see that the numbers of students suspended were large enough to avoid percentages involving one or two students. We feel that if the number of students suspended is less than 100, DPT ought not be applied. In a hypothetical small district with only 10 students suspended, the suspension of one less or one more minority student would make a 10 percent change in the percentage of suspensions that were minority students. Thus the district's status would depend upon the suspension of a single student. By requiring that at least 100 students be suspended before the test is applied, we insure that (a) the district does have a substantial policy of suspending students and (b) the events surrounding the suspension of a single student affect at most a one percent change in the test quantity.

Stratford's data show that the district suspended 765 students. All of the reporting districts in Connecticut, and most of the districts in the nation, suspend more than 100 students per school year.

3. We calculated the test quantity, i.e., the difference between the minority percentages suspended and the minority enrollment.

$$D_p = 100.\frac{n_{12}}{n_{1+}} - 100.\frac{n_{+2}}{n_{++}}$$

For Stratford, Connecticut, the calculations are:

$$\begin{aligned} D_p &= 100\,\frac{78}{757} - 100\,\frac{723}{9670} \\ &= 10.304 - 7.477 \\ &= 2.8 \text{ percent} \end{aligned}$$

4. We then compared the calculated differential proportion to a standard defined for each size of school district. We have suggested a standard of 10 percent for small districts (under 5,000 enrollment), 8 percent for medium size districts (5,000 to 15,000 enrollment) and 5 percent for large districts (over 15,000 enrollment). If the calculated differential proportion exceeds the standard, the district is held to show prima facie discrimination.

Stratford has a total enrollment of 9,826. If we compare the calculated differential proportion for Stratford, 2.8 percent, to the standard for medium size districts, we find that Stratford will not exceed 8 percent, and thus does not display prima facie discrimination by this test.

That Stratford was singled out for further review by the Chi Square test, but not as discriminatory by DPT illustrates two facts: (1) Chi Square test is very powerful when applied to school districts, and (2) DPT is doing its job of preventing districts with relatively small degrees of disparity from being selected.

DPT does not "show" or "prove" that Stratford was not discriminating. All it does is limit the selection to districts in which the evidence for the prima facie case does not depend upon the suspension or non-suspension of only a few students. In Stratford's case, the evidence of discrimination rests upon fewer than 25 of the more than 700 suspensions. Had the race of any 25 students in the 700 been changed, the district would have shown parity.

D. *Unidentified Students and the DPT.*—DPT must be applied only to those suspended and enrolled students whose racial identification has been supplied. Ethnically unidentified suspended students must be omitted from the calculation.

Waterbury illustrates why the unidentified group must be excluded.

	Total	Ethnicity of students			
		White	Black	Other	Unidentified
Suspended	2,031	183.0	153.0	34.0	1,661
Not suspended	15,771	12,455.0	3,469.0	1,389.0	
Enrolled	17,802	12,638.0	3,662.0	1,542.0	
Percentage of suspensions (percent)		9.0	7.5	1.7	81.8
Percentage of enrollments (percent)		71.0	20.3	8.7	0

If we did not exclude the 1,661 ethnically unidentified students from the suspended student total used as a base for the calculation of the percent of suspensions, we would reach the non-sensical conclusion that Waterbury is strongly biased in favor of whites, blacks, and "other" at the same time. In effect, the district would have been rewarded for incomplete reporting by receiving immunity from review. An unreasonable conclusion.

E. *Application of DPT.*—Below is the calculated differential proportion for all 15 Connecticut districts along with the reference percentage we suggest (whether or not the district differential proportion exceeds the reference percentage).

CALCULATED DIFFERENTIAL PROPORTIONS FOR 15 CONNECTICUT DISTRICTS

District	Size	Differential proportion (percent)	Reference percent (by size)	Excess over reference percent
Stamford	Large	35.2	5	30.2
Bridgeport	do	30.4	5	25.4
Norwalk	do	29.0	5	24.0
New Haven	do	25.7	5	20.7
Waterbury	do	23.3	5	18.3
Bloomfield	Small	22.2	10	12.2
Danbury	Medium	20.3	8	12.3
Middletown	do	19.8	5	11.8
New London	Small	19.2	10	9.2
New Britain	Medium	13.4	8	5.4
Hartford	Large	5.4	5	.4
Stratford	Medium	2.8	8	....
West Haven	do	1.3	8	....
Meriden	do	.7	8	....
Ansonia	Small	−.5	10	....

Of those districts singled out by Chi Square, only Stratford is excluded by DPT. And only Hartford is near the reference percentage in the remaining 11 districts. The other districts exceed the suggested reference percentages by a very wide margin. Changing the reference percentages from the levels we suggest would therefore have very little impact upon the proportion of all reporting districts established as meeting a prima facie case of racial discrimination in suspension rates. Indeed, they would have to be raised to 13 percent before any district besides Stratford and Hartford would escape selection. As in the case of Chi Square, this is not a flaw in the measure. It is a reflection of the severity of the suspension problem.

F. *DPT as a Priority Ranking Device.*—As DPT works only to prevent selection of districts where disparate suspension rates depend on the racial identification of a few suspended students, it is a poor device to select the "worst" districts for purposes of ranking priority for on-site or follow-up OCR review. Indeed, it will perform even worse than Chi Square which we earlier recommended against using for this purpose.

DPT has two severe defects as a ranking device. First, it is absolutely indifferent to the number of suspensions and will rate as "worst", districts which, although they discriminate, do so while suspending relatively few students from any race. For example, Stamford shows the highest value for differential proportions. Yet Stamford has the lowest total suspension rate (1.8 percent suspended) in the state, and shows the third lowest suspension rate for black students (4.4 percent suspended) in the state. That Stamford shows a prima facie pattern of racial discrimination in its relative rates of suspension is unquestionable. But the suspension problem in Stamford in general and among black students is far from the worst in the State of Connecticut. Second, DPT will single out an integrated district as relatively worse than a district that is almost all white or almost all minority even though the suspension rates in the districts are the same.

Connecticut does not supply a good example of this latter problem. But we can take a hypothetical example of three districts. Each district suspends one percent of its white students and five percent of its black students. Each has exactly 10,000 students enrolled. They differ only in that they are 10 percent, 50 percent, and 90 percent black respectively.

In our hypothetical districts, DPT will strongly point towards the 50 percent black district as substantially "worse" than the 10 percent black district and dramatically "worse" than the 90 percent black district. This would be an unreasonable result.

This is a defect in the use of the differential proportions test as a ranking device. The test itself is fine when used correctly for its intended function. For our three hypothetical districts, the test correctly suggests that the racial disproportions depend upon the racial identification of the fewest number of students in the 90 percent black district. The inference of disparity is more widely based in the 10 percent district, and least dependent on small numbers in the 50 percent integrated district.

HYPOTHETICAL DISTRICT FIGURES SHOWING THE VALUES OF THE DIFFERENTIAL PROPORTION TEST FOR THREE DISTRICTS OF IDENTICAL SIZE AND WITH IDENTICAL SUSPENSION RATES FOR WHITES AND BLACKS, BUT HAVING DIFFERENT OVERALL RACIAL PROPORTIONS

District "A," 10 percent Black enrolment:

	White	Black
Suspended	90	50
Not suspended	8, 910	950
Enrolled	9, 000	1, 000

$$D_p = 100_p\left(\frac{50}{140} - \frac{1000}{10000}\right) = 25.7\%$$

District "B," 50 percent Black enrollment:

	White	Black
Suspended	50	250
Not suspended	4, 950	4, 750
Enrolled	5, 000	5, 000

$$D_p = 100\left(\frac{250}{300} - \frac{5000}{10000}\right) = 33.3\%$$

District "C," 90 percent Black enrollment:

	White	Black
Suspended	10	450
Not suspended	990	8, 550
Enrolled	1, 000	9, 000

$$D_p = 100\left(\frac{450}{460} - \frac{9000}{10000}\right) = 7.8\%$$

III. THE FREQUENCY TEST FOR SCHOOLS WITHIN DISTRICTS

A. *Purpose.*—The frequency test is proposed for use, in large school districts with many schools that suspend students, as a secondary standard for the detection of patterns of discrimination. Its chief use will be to corroborate the results of the Chi Square and differential proportions tests in determining a *prima facie* case of discrimination in a district's reported suspension rates. It is also usable to detect mild but pervasive patterns of discrimination in districts which suspend one group of students at a *slightly* higher rate throughout the district. Since districts which disproportionately suspend students of one group usually do so massively, the second function of the frequency test will seldom occur.

B. *How the Test Operates.*—Suppose a hypothetical district suspended students from majority and minority groups without discrimination. Chance fluctuations would lead to slightly higher suspension proportions for one group in some schools, while other schools would show slightly higher proportions of the other group suspended. Since the suspension probabilities are equal for all students, the odds that one group will show the higher suspension rate in each school will be equal.

Stated differently, the suspension rates in any one school will be like the flip of a fair coin. There are equal probabilities that one or the other of the groups will come out slightly higher just as the coin may land heads or tails. As the district is assumed to be large, it is as if a fair coin were flipped many times with each flip an independent trial of its fairness.

Since we know the number of schools in the district (corresponding to the number of flips of the coin) and we also know the number of schools in which one group had a higher suspension rate than the other (corresponding to the number of times the hypothetically fair coin landed heads), we can calculate the probability of a genuinely nondiscriminating district having the suspension rates for one group exceed that of the other in as many schools as the observed district reports. The probability will equal that calculated from the cumulative binomial distribution function. When this probability is very low, we can conclude that the pattern of discrimination observed is very unlikely to occur by chance in a non-discriminating district.[13]

This test looks at a slightly different aspect of discrimination than either the Chi Square or the differential proportions test. Chi Square inquires into the likelihood of a chance explanation for the overall disproportionality in suspension rates. The differential proportions test inquires into how substantial the disproportionality in suspension rates is in comparison to the minority composition of enrollment. The frequency test inquires into the pervasiveness of discrimination without regard to the overall numbers suspended. All three tests look at different aspects of the pattern of discrimination. The frequency test is a secondary standard because it would not be reasonable to use it to exonerate a district as a whole. For example, a district that suspended disproportionate numbers of black students, but which did so only because of very large disparities at a few schools rather than smaller disparities at all schools would nonetheless show a *prima facie* case of discrimination. However, it would clearly be useful to OCR to know which kind of discrimination was occurring, i.e., whether the problem was pervasive or localized.

C. *How It Works.*—Unlike Chi Square, the frequency test makes no approximations. Unlike the differential proportions test, it does not require a large number of suspended students. But it does require some preliminary checking to insure that the test remains valid. Once the preliminary checks have been done, it is necessary only to count the total number of schools in the district and the number of those schools suspending minority students beyond majority rates. When the proportion of all schools suspending minority students beyond majority rates exceeds .75 (75 percent), the discrimination will be considered pervasive.

D. *Checking the Data.*—Since we are going to compare the suspension rate for one minority group to the majority group, both groups must have a sufficiently large enrollment in each school to insure that the proportions are not unduly affected by the suspension of one or two students. Thus the test should only be applied to those schools which have at least 100 enrolled students in each racial group.

Second, the test ought not apply to schools that do not suspend any students. If the relative disparity in suspension rates for any school would change direction if one more student from the group with the lower suspension rate was suspended, or if one less student from the group with the higher rate had not been suspended then that school ought to be excluded from the test.

Third, the number of schools which pass both of the above checks must equal at least 10. If at least 10 schools in the district have (1) at least 100 students in both the minority and the majority groups, (2) have suspensions, and (3) the suspension disparity rates do not depend upon the suspension of a single child, then the test can be applied to the district.

E. *Applying the Test.*—We will let N be the number of schools in the district. In a district with exactly 10 schools that meet all the above criteria, N would be 10. We then calculate 75 percent of N, rounded up. (If N were 10, 75 percent of N, rounded up, would be 8.) The number of schools in the district in which the minority rate of suspension exceeds the majority rate will be designated M. If M exceeds 75 percent of N (rounded up), then the district can be said to display a pervasive pattern of discrimination unlikely to arise by chance in a non-discriminating district. If the number of schools in which the minority rate exceeded the majority rate were 9 in our example (i.e., M equals 9), then since 9 exceeds 8, or 75 percent of the number of schools, rounded up, the district would be said to show a non-chance pattern or pervasiveness of discrimination.

Like all of our tests, the 75 percent standard is very conservative. For example, the exact probability of observing 9 out of 10 heads in a flip of a fair coin is about .01, or about 1 chance in 100. For districts with more than 10 schools, the probability will fall off very rapidly as the number of schools increases. Thus the test is even more conservative with larger districts.[14]

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[13] The frequency test is a classic statistical test known as the binomial test or as a Bernoulli test against a fixed probability (in our case the fixed probability is .5, or equal odds, the same probability as would be used to test a coin for fairness). It is presented in virtually all elementary texts, and a complete discussion is given in Chapter 10 of Freeman, reference (8).

[14] The exact probability leevls, if needed, can be found in National Bureau of Standards, "Tables of the Binomial Probability Distribution," 1950, reference (9).

F. *Limitations of the Current Applicability of the Frequency Test.*—At the present time the Annual School Campus Civil Rights Survey Reports contain current school year enrollments but give the suspension for the preceding school year. Thus school-by-school examination of suspension rates would require the matching of school records across years. Because of technical problems in the computer data base in which OCR maintains the data, year-to-year matching is difficult and suspect. Thus we cannot give an example from the Connecticut records and OCR could not apply the frequency test to its data until the computer procedure is changed. However, the test could be applied during an individual review of a selected school district, since no problem exists once the actual school-submitted documents are available.[15]

IV. RANKING TESTS FOR DETERMINING SEVERITY OF DISCRIMINATION

Though the thrust of our tests is to shift the burden on a case-by-case basis to school districts who show a *prima facie* case of discrimination, there will be a need for selected OCR follow-up investigations in districts which show extreme racially discriminatory patterns in suspensions and/or who persist in such practices. Which districts to single out for priority follow-up compliance efforts will depend on a number of factors. We would simply indicate three attributes which should be considered in ranking criteria: (1) they should be easily discernible to laymen; (2) they should be specific to the suspension issue, that is, should not be tied to the racial composition of the school district as a whole since that may have no bearing on the degree of discrimination in suspension rates; and (3) they should include some provision for magnitude comparisons of the suspension problems among the districts investigated.

We think that the best ranking measures for purposes of OCR on-site review are: (1) the difference between the minority and majority suspension rates, and (2) the number of minority students suspended who would not have been suspended had their suspension rates been equal to the majority rate. Table V gives the ranking of the 15 Connecticut districts by each of these two measures.

Finally, on March 22 and April 12, 1974, we wrote to you about the need to refine and strengthen OCR's Annual Elementary and Secondary School Civil Rights Survey. Members of the CDF staff met with OCR staff members. We expressed our great concern not only about the problems we discovered as to what questions were asked and not asked, but about your plans to cut back on the number of districts covered by the survey. The need is for more and better data, not less. We were therefore extremely surprised and dismayed to hear that you are considering conducting the survey every three or four years instead of annually. This is inexcusable and unacceptable. It would undercut any possible compliance program by OCR.

We would like to know if you are in fact no longer planning to conduct the survey on an annual basis, and if so, why. And we want to be clear that we will do everything we can to challenge such an action.

We would appreciate a response from you at the earliest date. We look forward to meeting in the very near future with you on OCR's proposed policy to meet the problems described here.

Sincerely yours,

MARIAN WRIGHT EDELMAN.

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[15] As with our previous tests, the frequency test should be applied only to the data of one minority group and the majority group. Different minority groups should not be pooled. Similarly, ethnically unidentified suspensions should be excluded entirely, for the same reasons set forth in our other tests.

TABLE I.—ENROLLMENTS AND SUSPENSIONS IN 15 CONNECTICUT DISTRICTS

District name	Students enrolled in October 1972				Students suspended at least once in 1972-73				
	Total	White	Black	Other	Total	White	Black	Other	Unidentified
Large districts:									
Hartford	28,069	8,130	13,855	6,084	2,104	541	1,171	392	....
Bridgeport	24,310	10,770	8,343	5,197	3,820	542	1,545	723	1,010
New Haven	21,310	6,979	12,338	2,184	903	90	774	39	....
Stamford	20,422	14,825	4,508	1,089	366	142	200	24	....
Waterbury	17,802	12,638	3,622	1,542	2,031	183	153	34	1,661
Norwalk	17,157	13,207	3,131	819	1,688	828	769	91	....
Medium districts:									
New Britain	13,562	11,017	1,207	1,338	553	373	113	67	....
Meriden	11,377	9,899	511	967	419	355	21	43	....
Danbury	11,129	9,928	944	277	292	206	84	2	....
Stratford	9,826	8,947	723	156	765	679	78	8	....
West Haven	9,511	8,539	863	109	447	395	46	6	....
Middletown	6,628	5,589	916	123	402	259	133	10	....
Small districts:									
New London	4,676	3,171	1,175	330	397	201	173	23	....
Bloomfield	4,222	3,162	1,019	41	234	124	108	2	....
Ansonia	3,888	3,346	514	28	188	163	24	1	....

TABLE II.—FORMAT OF DATA FOR THE CALCULATION OF CHI SQUARE VALUES

[Figures are 1972-73 data from Stratford, Conn.]

Suspension status of students	Ethnicity of students		Total number of students
	Majority (white)	Minority (black)	
Number suspended at least once	$n_{11}=679$	$n_{12}=78$	$n_{1+}=757$
Number not suspended	$n_{21}=8,268$	$n_{22}=645$	$n_{2+}=8,913$
Total number of students	$n_{+1}=8,947$	$n_{+2}=723$	$n_{++}=9,670$

TABLE III.—EXPECTED VALUES FOR THE STRATFORD DATA

Suspension status of students	Ethnicity of students		Total Number of students
	Majority (white)	Minority (black)	
Number suspended at least once	$n_{11}=679$ $m_{11}=700.4$	$n_{12}=78$ $m_{12}=56.6$	$n_{1+}=757$ $m_{1+}=757$
Number not suspended	$n_{21}=8,268$ $m_{21}=8,246.6$	$n_{22}=645$ $m_{22}=666.4$	$n_{2+}=8,913$ $m_{2+}=8,913$
Total number of students	$n_{+1}=8,947$ $m_{+1}=8,974$	$n_{+2}=723$ $m_{+2}=723$	$n_{++}=9,670$ $m_{++}=9,670$

TABLE IV.—CALCULATED CHI SQUARE VALUES FOR THE NULL HYPOTHESIS OF EQUAL SUSPENSION PROBABILITIES FOR WHITE AND BLACK STUDENTS IN 15 CONNECTICUT DISTRICTS

District	Size	Chi square	Discrimination against
Norwalk	Large	[1] 958.101	Blacks.
Bridgeport	do	[1] 877.63800	Do.
New Haven	do	[1] 257.95700	Do.
Stamford	do	[1] 238.739	Do.
Danbury	Medium	[1] 151.97100	Do.
Middletown	do	[1] 134.07200	Do.
Waterbury	Large	[1] 105.84600	Do.
New Britain	Medium	[1] 100.21300	Do.
New London	Small	[1] 75.57100	Do.
Bloomfield	do	[1] 64.36400	Do.
Hartford	Large	[1] 22.80300	Do.
Stratford	Medium	[2] 9.05100	Do.
West Haven	do	.72000	....
Meriden	do	24700	....
Ansonia	Small	.00783	....

[1] Statistically significant beyond the 0.001 level.
[2] Statistically significant beyond the 0.01 level.

TABLE V.—PERCENTAGES OF BLACK AND WHITE ENROLLMENTS SUSPENDED AT LEAST ONCE IN THE 15 CONNECTICUT DISTRICTS

District name	Percent suspended at least once		
	White	Black	Difference Black—White
Ansonia	4.9	4.7	−0.2
Bloomfield	3.9	10.6	6.7
Bridgeport	5.0	18.5	13.5
Danbury	2.1	8.9	6.8
Hartford	6.7	8.5	1.8
Meriden	3.6	4.1	.5
Middletown	4.6	14.5	9.9
New Britain	3.4	9.4	6.0
New Haven	1.3	6.3	5.0
New London	6.3	14.7	8.4
Norwalk	6.3	24.6	18.3
Stamford	1.0	4.4	3.5
Stratford	7.6	10.8	3.2
Waterbury	1.4	4.2	2.8
West Haven	4.6	5.3	.7

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STATEMENT OF MARIAN W. EDELMAN, CHILDREN'S DEFENSE FUND

Ms. EDELMAN. At least one arguably discriminatory practice we found in discipline between men and women or girls and boys is that girls are suspended for pregnancy. That seems to me to be a very clear practice in many districts. Perhaps the boys should be suspended for parenting.

I am going to try to summarize the testimony. We think the suspension problem has gotten out of hand. We think it is a major problem in school districts, a problem which requires urgent action by the Federal Government, particularly in the areas of race and sex as well as by local and State superintendents of education.

In the districts we have analyzed and recently published a report on school suspensions asking the question are they helping children. Overall, we concluded not. But using OCR data for over 2,800 school districts we concluded from the data the following. I am summarizing it quickly in more detail. I would recommend to you or provide copies if you don't have them the report itself, which does, Congressman Quie, have all the State provisions that were in force on suspensions and expulsions.

[Summary of the report follows. The report is on file in subcommittee office.]

STUDY CALLS FOR END TO WHOLESALE USE OF SUSPENSIONS IN AMERICAN PUBLIC SCHOOLS

"The use of suspensions in public schools has reached mammoth proportions," stated a report released today by the Children's Defense Fund (CDF). In the 1972–73 school year, school districts enrolling 53 percent of the student population in this country suspended over one million children for over four million school days and over 22,000 school years.

CDF's analysis of data submitted to HEW's Office for Civil Rights shows that one in every 24 children enrolled in the reporting districts was suspended at least once in the 1972–73 school year. At the secondary school level, that number rose to one in every 13 children. Fifteen states reported suspending over 30,000 children each. California alone reported suspending 142,000 school children—even though its data did not include any schools in Los Angeles!

"While the largest numbers of suspended children are white, proportionately suspensions hurt more children who are black, poor, older, and male." According to CDF, black school children bear the brunt of suspensions; they are suspended at twice the rate of any other group. Twenty school districts reported suspending one-third to one-half of their black students; one district suspended 64 percent of its black students; another district suspended 53 percent. Although black suspension rates stand out, CDF's survey data and interviews make plain that they are in large part the result of racial discrimination, insensitivity and ignorance as well as part and parcel of a pervasive intolerance by school officials for children who are different in any number of ways.

But no group of children, region of the country or size of school district is immune from the problem of suspensions. Among the twenty worst districts in the country during the 1972–1973 school year were: Gridley, California, with 631 children enrolled, which suspended 40.9 percent of them an average of .8 days; Joliet, Illinois, with 6,460 children enrolled, which suspended 32.0 percent of them an average of 3.7 days; Bridgeton, New Jersey, with 6,569 children enrolled, which suspended 31.1 percent of them an average of 3.6 days; and Drew, Mississippi, with 1,384 children enrolled, which suspended 28.8 percent of them an average of 8.6 days.

The report, "School Suspensions: Are They Helping Children?" is a follow up to CDF's earlier study on "Children Out of School in America," published last December, which reported on its survey of over 6,500 families and more than 300 school officials and community leaders in nine states and the District of Columbia. The new report looks in detail at one aspect of the school exclusion problem: suspensions. CDF's own survey findings on school discipline are supplemented by its analysis of suspension data submitted to the Office for Civil Rights by 2,862 school districts across the country enrolling 24,188,681 children and by interviews with teachers and principals about disciplinary policies and practices. Special attention was given to alternative measures which are used to maintain order but which do not remove children from school.

Though statistics cited in the CDF report reveal rampant school suspensions, even they "understate the problem of disciplinary exclusions in American schools." According to CDF, these figures do not include all those children who were informally sent home under such euphemisms as "cooling-off periods," punished by being placed unnecessarily in special education classes, or transferred back and forth among schools or school districts. Also not included are the thousands of dropouts for whom a suspension was the triggering incident in their decision to leave school permanently.

Data from the Office for Civil Rights further underestimate the suspension problem, CDF says, because: (1) not all school districts were included in their survey; (2) many school districts in the survey failed to report suspensions either at all or accurately (for example, Los Angeles reported no suspensions); and (3) only the numbers of pupils suspended at least once were counted. CDF's own survey showed that 40 percent of suspended students had been suspended two or more times and 24 percent were suspended three or more times.

MYTHS OF SUSPENSION

"Many people assume that school suspensions affect a few patently unruly troublemakers" who cause violence and vandalism in the schools. "They also assume that suspensions are an effective educational tool, evenhandedly administered, used only after other alternatives have been tried and have failed, and are an essential deterrent to growing reports of school violence and disruption. None of these assumptions is true," CDF says.

Instead, the report states, "the number of truly dangerous and violent children in schools is very small," and that "most children who commit violence and vandalism are not suspended but are expelled. Yet the vast numbers of children suspended have become confused in the public mind with the relative handful of enrolled students who commit a chargeable offense."

KEY CDF FINDINGS

CDF's director, Marian Wright Edelman, stated: "Our study of school suspensions has led us to the following broad findings and conclusions:"

The vast majority of suspensions are for nonviolent offenses. CDF's survey found that 63.4 percent of the suspensions were for nondangerous offenses; 24.5 percent were for truancy and tardiness. In some districts, the figures were worse. In a Portland, Maine senior high school, over 85 percent of the suspensions during the 1973–74 school year were for truancy and tardiness. In three junior high schools, the figure was 67 percent. By contrast, CDF's survey found that less than three percent of suspensions were for destruction of property, the use of drugs or alcohol, or other criminal activity.

Suspensions are often imposed arbitrarily, without affording the student an opportunity to explain, or without giving his or her parents an opportunity to be contacted. Only 3.4 percent of the children in CDF's survey had any hearing.

There is extraordinary variation in the length of suspensions and in the numbers and kinds of suspendable offenses among school districts and even among schools in a single district. Children's chances of being suspended, therefore, depend on which district, which school, and which class they have the luck to land in. For example, 13-year-old Shelia was suspended from hew newly desegregated school for refusing to remove a headscarf which she was permitted to wear the previous year in her all black school.

Too few school districts have or disseminate to administrators, teachers, students, and parents, clear, written and consistent rules of conduct. As a result, what children can be suspended for is defined and carried out by individual administrators and teachers. For example, one child was suspended for "arrogant definance to authority, not verbal but by look."

Most suspensions do not serve any demonstrated valid interests of children or schools. Instead, they harm the children involved and jeopardize their prospects for securing a decent education. Suspensions push children and their problems onto the street, thereby causing more problems for them and for the rest of us. They have become a crutch enabling school people to avoid tougher issues of ineffective and inflexible school programs; poor communications with students, parents, and community; and a lack of understanding about and commitment to serving children from many different backgrounds and with many different needs in our public schools.

CDF CALLS FOR END TO MAJORITY OF SUSPENSIONS

Director Edelman stated that "Suspensions should be ended except in a small minority of cases where harm to persons or property is immediate and serious. Our primary goal is to curb suspension for all children. Our interim and urgent goal is to eliminate its arbitrary application against black and other minority children. At the very minimum school officials must adopt and enforce fair procedures which respect the right of parents and children."

In place of suspensions, CDF urges the development and support of educational alternatives within the public schools to meet the needs of many different kinds of youngsters and teachers.

The Children's Defense Fund of the Washington Research Project, Inc., is a national, nonprofit organization created in 1973 to provide long-range and systematic advocacy on behalf of the nation's children. It is funded by private foundations and staffed with lawyers, federal policy monitors, researchers and community liaison people dedicated to reforming institutions, policies and practices affecting the lives of children. Its principal offices are at 1520 New Hampshire Avenue, N.W., Washington, D.C. 20009 and 1746 Cambridge Street, Cambridge, Massachusetts 02138.

School Suspensions: Are They Helping Children?—May be obtained by writing the CDF Cambridge office or calling (617) 492-4350. The purchase price of the report is $4.00 and mailing costs ($2.00, first class; 50¢ fourth-class), plus sales tax where applicable. The report will be mailed without charge to members of the press.

Ms. Edelman. In 1972–73 we found from OCR data that more than a million children had been suspended for more than 4 million schooldays and 22,000 school years; 15 States reported suspending over 30,000 children each. Since Pennsylvania has been testifying today I would just point out that we found out it was sixth in the number of children suspended. They suspended in 1972–73, Congressman Goodling, 48,842, and they also were fourth in the percentage of children suspended during 1972–73, having suspended 6.8 percent of their entire student enrollment, which we think is a high figure.

To give you a little more specific data on some of your Pennsylvania districts where we think there is a major problem overall and particularly by race, in the Coatsville area of Pennsylvania they had an overall suspension rate of 6.3 percent, 11.7 percent minority children, almost double that of the white children.

In Chester Upland you had an overall suspension rate of 14.5 percent, which we think is high, 16.4 percent of minority or black children were suspended.

In Cornell, Pa., an overall suspension rate of 14.5, 20.5 percent of your black students.

Harrisburg, an overall suspension rate during 1972–73 of 14.6 percent, 18 percent of your black students.

In Kennett Consolidated District, Pa., an overall suspension rate of almost 10 percent of which 10.5 percent were black.

In Pittsburgh, which shows up in our top 20 districts for the worst districts, a dubious distinction, Pittsburgh comes off No. 6 in the numbers of children suspended. They suspended a—sorry, sixth in the percentage of suspensions: 13.7 percent overall suspension rate. They have suspended over 9,500 students. They also showed up as No. 6 in the number of black suspensions, having suspended almost 5,600 black students.

Your own Pennsylvania data raises serious questions not only in terms of the overall suspension rate but in terms of racial disparity of the suspension rates. I am not saying this is racial discrimination. It at least raises the presumption that it ought to be looked into further which I think the HEW memorandum is intended to help us do.

During 1972–73 15 States reported suspending over 30,000 children. California alone reported suspending 142,000 children. Los Angeles didn't report any. We don't believe that for a minute. We would hope that better reporting requirements would result in places like Los Angeles reporting more actively to OCR.

But even these numbers which we find alarming in many ways understate the problem of disciplinary exclusion. I won't go into it in detail. The testimony points out all the reasons why we think the OCR data underestimates it. They don't cover expulsions. Districts reported to OCR during 1972–73 almost 37,000 expulsions. They don't include all those other things called something else but which are in effect suspensions.

The problem of disciplinary exclusions in American schools is a very major one, affecting too many children.

We found that the great majority of suspensions were for nonviolent, nondangerous offenses. In our own survey which we did of 6,500 households in 30 areas of the United States we found that 63.4 percent of all the suspensions in our survey were for nondangerous offenses; 25 percent were for truancy and tardiness.

The same pattern emerges as we gain access to suspension records of other school districts. In Portland, Maine, for instance, 85 percent of all suspensions in the two senior high schools during 1973–74 were for truancy and tardiness. The Portland experience was instructive because we sat down with the principals and the superintendent and for the first time went through their own records.

Overall we found in the districts we surveyed that very poor records were kept on discipline. Even when they were kept, very seldom were they analyzed on a regular basis. When superintendents sit down with us and go through their records they are surprised at what they find and are taking corrective measures. In Portland they are trying to see this year if they can run the discipline program without suspending children for these two offenses. We are grateful for that.

Absenteeism is at the head of the list for reasons for suspensions during school years in such diverse school districts as San Francisco, Prince Georges County, Md., Columbia, S.C., Nashville, Tenn., and deKalb County, Ga.

While truancy and tardiness are not specific grounds that it is clear to me the Federal Government can do anything about, at least through title VI, unless as we have shown there is a disproportionate minority impact, this certainly raises questions about the need to reevaluate this because it doesn't make any sense to me to suspend a child in a way in which the penalty is exactly the offense which he is being accused of. It seems a little like giving alcohol to an alcoholic.

In our own survey, 36.6 percent of suspensions were for fighting but only 1.6 percent were for fights with teachers or other school personnel. The rest were ordinary student-to-student scuffles.

One of the most surprising facts in our survey was that we found very little corrolation between suspension and violence which has been so much connected in the public mind. The facts that we have before us—and we haven't seen any other facts—show that less than 3 percent of the students in our survey who were suspended were for direct destruction of property, use of drugs or alcohol or other criminal activity.

The overwhelming number of suspensions have almost nothing to do in our view until we see something otherwise that have to do with violence.

Our third key finding, and most important I think in terms of our concerns today with this OCR memorandum, is that while no group of children is immune from suspensions the impact is disproportionate on children who are black, older, poor and male. While 120,000 elementary school children were suspended, nine times as many secondary school children were suspended during 1972–73 and all of my remarks are during this school year.

Blacks were suspended at twice the rate of any other racial group. Nationally if they had been suspended at the same rate as whites nearly 50 percent or more than 188,000 black children who were suspended would have remained in school.

Although black children accounted for 27.1 percent enrollment in the districts according to OCR data they constituted 42.3 percent of the racially identified suspensions.

I point out in my testimony the number of districts that failed to report by race suspensions, which would be helpful to OCR, and I point out that this is one kind of defect it seems to me that is going to be corrected.

Twenty school districts reported suspending one-third to one-half of their whole black enrollment. One district suspended 64 percent of its black students, another 53 percent. Some people will claim that a higher suspension of black children simply reflects a greater amount of poor behavior. We disagree with this conclusion. We have found what black parents, children and civil rights groups have charged for years, that there is racial discrimination in the use of disciplinary sanctions and racial insensitivity and Peter Holmes, OCR Director, has also commented that just a cursory examination of OCR data suggests the probability of widespread discrimination in the application of disciplinary sanctions.

We found black children in our own survey and from our interviews with school officials were more likely than whites to be suspended if both had committed the same offense and that some offenses clearly have the effect of disproportionately affecting suspension of black youngsters. Many districts forbid the carrying of a metal pick comb for combing certain Afro hair styles or head scarves.

High suspension rates for black students were found in both segregated and desegregated systems alike. For example Newburgh, New York has resisted all State efforts to desegregate its schools but they suspended 22 percent of their black school students in 1974–75.

In Boston, where the school committee has resisted desegregation efforts, they suspended over 50 percent of its black high school students during 1974–75. There are court suits pending on discipline in both these cities.

The schools have not come to grips with the need for racially sensitive actions on the part of their school staffs and have not made adequate preparation to deal with the growing number of minority children in previously white schools.

But we are encouraged because we have found school districts where there are not racially disproportionate suspensions. We would like to point that out because we think that those districts exist. As we get access to data it is a minority of administrators and teachers who are resulting in greater numbers of suspensions. There are many teachers and administrators who manage to keep the classrooms going without suspending lots of children.

You have got school districts with almost identical characteristics where one will suspend relatively few. An example is Birmingham and Mobile, Ala. Mobile manages to suspend half as many black children as Birmingham does. We have found this kind of pattern throughout a number of school districts which otherwise were alike and had widely varying patterns of suspensions.

We think the basic thing that should be premised here is that it is the school official's conduct that determines the number of suspensions and as to who is being suspended and not necessarily the student's conduct.

Fourth, we have found that a number of districts have designed a variety of responses across the country to provide a range of alternatives to suspensions for both school and students. We think that there are ways of maintaining discipline without excluding students. We are pleased to find a number of districts who are managing to do that.

It is not that school officials don't know how to run their schools without suspending students. It is that they have no yet decided that they want to use alternative devices. We think that this attitude in light of the incredible loss of schooling that so many children are suffering, particularly with arbitrary application against black students, can no longer be tolerated.

Fifth, we found that no school official among the 300 we interviewed contended that suspensions help children. Rather than defending suspensions for educational reasons almost all the officials interviewed said this is done so that they get the parents in. We think this is an inadequate requirement particularly since 33 percent of the children in our survey came back in without ever having a parent-child conference. Even where we found parent-child conferences going on they were seldom to deal with the underlying problem. They were simply a pro forma kind of thing.

We think that imaginative school officials can find ways and we found school officials who can manage to relate to parents and can get their children's behavior problems settled without requiring them to come back to school or to use suspensions as a rationale.

We believe that suspensions have become a crutch, enabling school people to avoid the tougher issues of ineffective and inflexible school programs, poor communication with parents, students and community, and a lack of understanding and a commitment to serving children with many different backgrounds and many different needs in our public schools.

While suspension didn't help kids, didn't solve much, it hurt in at least six ways, which I will mention briefly. It caused marginal students to drop out. It caused permanent school leaving. Almost 11 percent of the children in our survey who were out of school permanently said that the reason they left was because of suspension. It labels children as troublemakers and sets up a presumption of guilt in their record and in their teachers' expectations.

We have been conducting a study of Los Angeles schools recordkeeping practices in light of the Buckley amendment. We have been doing it for the last year and a half. It will be published in the next several months. We found discipline behavior files that exist forever. There is no expungement on a year-by-year or 2-year-by-2-year basis.

We have found in inquiries in other school districts that on the whole we have not found a lot of districts who make it a practice to reevaluate at the end of the year and destroy them. We would like to see that done on a periodic basis. But on the whole we find that almost everything that goes into the school record, including discipline and suspension, is retained almost forever. Los Angeles is on microfilm.

School suspensions need to be replaced with alternative educationally sound and effective disciplinary measures. We think the highest priority must be given to weeding out racial discrimination which we think is a major problem and we don't think we can afford to wait another year in order to be able to do this because the cost to minority students in the loss of schooling and the alienation and the sense of unfairness is something that cannot be tolerated a day longer. We think the OCR memorandum is a minimal first step in that direction. We have not heard any objection to it that says it cannot be done. It seems to me that any inconvenience that is involved should be weighed against educational futures of so many children who might be affected.

I am unable to understand how school districts in this important area of discipline can know what they are doing, can make evaluations of effectiveness and indeed enforce their own State provisions unless they have the very minimal kind of data that OCR is asking for. We think this data would be a great help to them and to parents and children who can then have a very clear idea of who is being suspended, why they are being suspended, what kinds of procedures are being used in those suspensions and know where they can correct their own problems without Federal intervention and without outside advocate intervention.

I think it is crucial that OCR go beyond issuing just this memorandum. Getting good information is crucial to the enforcement of any policy. We urge strongly that they issue a broad comprehensive compliance policy in this area. We have drafted one which we have attached to our testimony. We hope they will not only maintain the current effort but will go beyond that and work out a detailed comprehensive plan and policy to make sure that racial discrimination in school discipline is ended. In the interest of time I won't go into that. But it is in our statement.

Mrs. CHISHOLM. Thank you very much, Ms. Edelman.

I personally want to thank you tremendously for the job you have done in the Children's Defense Fund. You have focused on one of the most important issues in this country.

Ms. EDELMAN. Thank you.

Mrs. CHISHOLM. Two basic questions. In light of what you have said we know that if a salesman is unable to do an effective job that eventually that salesman is dismissed or removed. We know that so often in many of our school situations that teachers do not have the kind of requirements they need. I am not talking about academic accomplishment. I am talking about a sensitivity and a feeling for children.

Do you really feel that perhaps what has happened now is that there is a necessity for teaching-training institutions in this country to initiate a completely new kind of curriculum dealing with some of the issues that you have addressed this morning because of the fact that ever since desegregation began to take place we have begun to notice tremendous numbers of suspensions of students, which leaves me believing there is an inability on the part of the educator even despite his academic credentials to cope with different types of students coming from different types of backgrounds.

Ms. EDELMAN. I think there is no doubt that schools of education and teacher training institutions are not doing their jobs in preparing teachers. We could not find one dissertation dealing with student discipline. We were looking for one for background. It is not a subject that has been given a great deal of attention. So many people who have so much to do with children are so ignorant of child development and therefore there is a discipline problem. If you aren't aware of what an 8-year-old is about or what a junior high school kid goes through in making that transition and the kind of stresses they go through.

I personally despair of having any ability to influence in any major way the schools of education. The most important thing we can do is to affect who principals are because a good principal can set a tone and an atmosphere and a set of expectations in that school that can make bad teachers better and good teachers better. We have found that the key in many ways in those schools where suspensions have been used very little has been the fact that you have got a principal who doesn't believe in it and who has made it clear that he is not going to expect certain things.

We have also found that the key to decent racial relationships in a school depends upon a principal who says it is going to work.

I think that parents and teachers and policymakers have got to zero in on the principal selection process and think about the criteria and the kind of people who are going to work to make children's rights the first thing in their consideration. I think that will have a greater impact than any amount of teacher training you might undertake.

Mrs. CHISHOLM. One final question. You noted that absenteeism is one of the high criteria in terms of the suspension of students from the school situation. Do you have enough evidence to suggest there might be a correlation between this high absenteeism rate and the kinds of attitudes and feelings and the kind of school milieu that would cause large numbers of children not to go to school?

Ms. EDELMAN. We have individual sets of interviews, nothing systematic. But certainly in the context of our survey, talking to parents and children, it was very clear that one of the reasons that children are not there is because they don't feel there is any reason to be there. If a child who speaks Spanish finds that there is nothing there in Spanish he is going to leave. We found that children who have a range of learning disabilities would come there and have the disabilities undiagnosed and unrecognized. They begin to get bored with school and they leave.

Indeed I think it has been very, very clear that a range of rigid practices and nonflexible recognition of various kinds of children, that all children are not alike. All children do not learn in the same way. There has been this basic movement of school toward the norm or toward the middle that does not take into account the great variety of learning styles of students that result in their being bored and leaving school.

Mrs. CHISHOLM. Mr. Quie?

Mr. QUIE. Thank you.

First let me ask you, Ms. Edelman, on page 3 of your proposed Department of HEW Office of Civil Rights discipline policy, you use 10 percent as the indication of whether there is greater disciplinary exclusion of students of minority groups. Would you feel that we ought to do the same thing with sex if there is greater than 10 percent?

Ms. EDELMAN. Generally I am not prepared to answer that. I am prepared to answer on what I know. I have not done any independent study on sexual things. We have had a lot of conversation on the racial stuff and a lot of experience in our 10 years. I don't know enough about the patterns of sexual discrimination. I know that there are punishments that are disproportionately more often visited on young women than on young men. But we don't yet know enough and I don't think the issues are sufficiently similar. Even if the problems are there in different ways I am not prepared to say that this formula would be appropriate. My suspicion is that it wouldn't be.

Mr. QUIE. In your studies of minorities do you have information on female minorities as opposed to other females?

Ms. EDELMAN. It is clear from our survey data that black males or black females' suspensions, that race was a stronger determinant than sex. The order of suspensions were black males, black females, white males and white females.

My instinct is that the problem with women comes more in the kinds of offenses that are discriminatorily applied against them as opposed to numbers.

It is pretty clear from our data and other data that males are disproportionately affected. It seems to me that if you look at certain kinds of offenses you will find they are almost exclusively female offenses.

Mr. QUIE. Does the sex part of your study appear here?

Ms. EDELMAN. Some of it is there, Congressman, some of it in more detail in the information we can provide. But the sex data in our study is not half so strong as the racial data. We had a question on it but it was not systematically done.

Mr. QUIE. Do you know of anyone who has looked at this question of sex discipline?

Ms. EDELMAN. I do not.

Mr. QUIE. Another question is, do you think that OCR has any responsibility in schools that are of a single race, where there are no minority students in the school district? I recognize that they do under title IX. But do they have any responsibility in a single-race school district?

Ms. EDELMAN. I guess if there were one thing that I would be willing to concede on this memorandum it is that I would be happy to have the data for the 3,000 districts with a minority population that OCR has covered. I hope the rest of my female friends won't kill me. But at the moment the data seems to be that those who have been based under title VI racial percentage populations—I think the other 13,000 should be keeping the record. It is clear to me that the discipline problem is one that goes beyond race and far more white children are going to benefit from decent reporting requirements than are black children.

If there had to be one change or shift I would consider or be happy to start off with the 3,000 districts and consider moving beyond that to the other districts under title IX.

Mr. QUIE. What are you doing to disseminate your study and recommendations? I would think it would be invaluable for at least those 3,000 school districts.

Ms. EDELMAN. We have a mailing list of 3,000. It has gotten very good local coverage; 98 percent of our first two reports are being bought by school districts throughout the country. We must have heard from every school district that was included in our survey in the last 2 weeks. It is selling very well. We are also making a great effort to disseminate it to community groups and State school officers on our mailing list and to selected school districts who have now requested other CDF reports. So we anticipate broad dissemination. We have been getting a good response from school officials.

Mr. QUIE. Would you provide for the record your answer to a question I asked Mr. Pittinger about whether the principle responsibility for discipline is State or Federal?

Ms. EDELMAN. I would be delighted to.

[Letter to Chairman Perkins follows:]

CHILDREN'S DEFENSE FUND,
THE WASHINGTON RESEARCH PROJECT, INC.,
Cambridge, Mass., December 10, 1975.

CARL D. PERKINS,
Chairman, Committee on Education and Labor, Subcommittee on Elementary, Secondary, and Vocational Education, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN PERKINS: This is in response to your request of November 18 that I supply information on a question raised by Mr. Quie during the hearings on student suspensions.

Question: Is the issue of discipline a state or federal question?

Answer: The issue of school discipline, like many other particular educational policies and programs, is the responsibility of the states, most of which delegate that responsibility to local school districts. However, as in other areas, state and local responsibility are subject to the Constitution. Similarly, state and local districts who take federal money must do so in a manner that treats all school children equally.

We have found in many areas, as we document in our report, "School Suspensions: Are They Helping Children?," a lack of thoughtful local and state policy in the area of school discipline. We have also found an equal lack of good local information on school discipline practices. Unregulated and unmonitored state and local discretion in school discipline policies has caused widespread problems to some children as a result of discrimination on racial, sex, class and handicap grounds. Equal protection of the law and due process of law are federal concerns. The Constitution dictates this. The need to ensure that federal money is not used to discriminate against any group is required because of Title VI of the Civil Rights Act of 1964 and subsequent federal requirements in the areas of sex and handicap I hope that federal interest, questioning and compliance efforts in these areas will provide an impetus to school people to reexamine their school discipline policies and practices to ensure that they comport with state and federal constitutional, as well as decisional and administrative requirements. Most importantly, I hope that the much needed information OCR plans to require in the area of school discipline will provide a basis for local school officials rethinking their practices in terms of the educational and personal impact on children of exclusionary discipline policies. I also hope that state and local districts will exercise their responsibility in the school disciplne area in such a manner that a substantial federal role will be obviated.

Sincerely,

MARIAN WRIGHT EDELMAN.

Mrs. CHISHOLM. Ms. Edelman, we are going to have a brief recess for about 5 minutes to go and vote. We will come right back.

[A recess was taken.]

Mr. MILLER. We can go ahead and reconvene. Mrs. Chisholm is going to be tied up on the floor a few minutes and I think will be back. Let us start.

I have a couple of questions I would like to place to you, Ms. Edelman. First let me say I want to thank you for your testimony. I think you were one of the first witnesses I have heard when I first came to the Congress this year. I am as much, if not more, impressed by your testimony today than I was then on child care.

You mentioned that the No. 1 cause for suspensions seemed to be absenteeism. You mentioned the fact that very few causes are related to violent behavior, if you will. But obviously it must be related to some type of behavior.

My question is what kind of behavior are we talking about? Are we talking about bad manners? Are we talking about a very disruptive child? What kind of student are we talking about?

Ms. EDELMAN. It is complicated. Looking at the table of the summary of reasons found in our survey, everybody knows what "fighting" is. That accounts for 36.6 percent. The behavior problems were everything from smoking—smoking was considered by the State school superintendent in Michigan to be the single largest discipline problem in the schools and the smoking percentage was pretty high up there—to absenteeism and tardiness and there were such vague things as "wrote bad words," "needed cooling off period," "cutting in lunch line," "writing on teacher's desk," "going to lunch without permission."

These are all things that children do and which are disruptive. We include the list of suspensions from the two Portland senior high schools.

Some of them are marvelous. But what you find in many discipline codes are vague, broad prohibitions on broad grounds such as "opposition to authority"; "opposition to authority" can mean a variety of things. In one Portland school they said "opposition to authority" meant lack of cooperation or stealing.

Mr. MILLER. Or stealing?

Ms. EDELMAN. I can read the four or five kinds of opposition to authority which is a very broad discretionary thing.

Mr. MILLER. But first you mentioned noncooperation and stealing?

Ms. EDELMAN. Stealing. Absenteeism. Smoking in building. Lack of cooperation. We have one that says "poor behavior." We have one that says "crude remarks" to teachers, "disruptive behavior in class." We have one, "left school without permission." Many are just plain "poor behavior" and "not abiding by school rules," which doesn't tell us very much.

My favorite among all of these things—I am trying to find it—oh, yes, "arrogant defiance to authority, not verbal but by look."

The point is that what constitutes disruption is pretty much up to teachers and principals and there is very little consistency so that the student will not know what is expected of him with these broad prohibitions in the school districts.

Mr. MILLER. One of them was leaving school without permission. When I was in high school and I wanted to do something during the week, I would cut school and not bring a note. Then you got suspended. But they never told your parents. Then you didn't have to bring a note the next few days because you were already punished for not bringing a note. It was a great system.

One of my concerns and I think you might have talked to a member of my office staff about it is sort of like the Defense Department's "worst case scenario," and that is the child who for some reason or another is taken out of the home, out of the community, transferred across State lines.

It is my suspicion that we will see this year when a couple of studies are completed that some of these children have become victims of banishment and have become candidates for banishment because what starts out as a behavioral problem gets labeled along the line or dealt with, let us say, by special education if you will and pretty soon we have created a candidate for removal from the school system, even more permanent than suspension, expulsion and finally a candidate for institutionalization either in the State or out of the State.

I just wonder in your study if you have taken a look at where are these children who are suspended. You mentioned that 11 percent said they dropped out as a result of suspensions. But where are the others? Are they simply on the street? Am I being too dramatic in my assessment that this is a compounding offense?

Let me ramble on just for a second. We find many times in a minority community and other communities that when you are stopped by a police officer and you say, "Hey, leave me alone," that becomes resisting arrest. Then things start building until pretty soon you are in for assault and battery whereas it started as an inquiry on the street. You can't get out of it. We find that our jails are populated with people like this.

I wonder to what extent our State institutions for the emotionally disturbed and the mentally retarded and so forth become the havens——

Ms. **Edelman**. I think it is very clear that a lot of kids are being pushed out onto the street, becoming idle, getting into trouble. We have found after talking with juvenile justice officials in a number of States that the kids get progressively more and more in trouble and again there is a very high racial corrolation here. The officials we have talked to mention that the children have had problems in schools that have been unmet.

I had a juvenile justice official tell me something interesting last week. The worst ones, he told me, have internalized the school determination that they are unmanageable. "Don't you know I am a bad cat? The schools couldn't do anything with me. And you can't do anything with me." He said that kind of internal psychological labeling is one of the strongest things they have got to deal with. I am convinced that we have got to do absolutely everything we can to keep these kids in school.

For many of these children the school is the most stable institution they have and that by pushing these students out we are inevitably starting them on the road to crime and all the rest. I think there is no doubt about this being an escalating device. For children who have problems, suspension is a particularly inappropriate device. For children who are violent and who have real needs the last thing we should do is push them out in the streets.

Perhaps more vandalism in schools and more violence in schools is caused by people who have been pushed out of school and who are hangers-around the street and who hate the school for not having met their needs and not responding to them or having expelled them and pushed them out.

Mr. Miller. I think some time ago I read a study that with school vandalism they catch kids who come back to swing out at the institution and knock out the windows.

I understand next door here in Arlington one in four or one in five robberies is by a school aged student commiting daytime robberies.

In your report do you also tell us the number of the suspended students who are repeaters?

Ms. Edelman. We found that 40 percent of the children had been suspended two or more times and 24 percent had been suspended three or more times.

Mr. Miller. Would you care to speculate to what extent perhaps some special education programs may be used as a disciplinary factor?

Ms. Edelman. In the report that will be coming out in about 3 months we have been analyzing that data on a national level. It is very clear that special education is often a program for troublesome students. Again you see the same racial concentration and racial disproportions in special education.

In the South we find that black children are much more likely to be in special education classes than white children, up to almost 10 times as likely. The overall data shows that about twice as many black children are in special education as white children and they are more likely to be segregated into classes in desegrated schools.

There are three all-black special education districts. Most of them are in Missouri. We are about to file suit against one of them.

Mr. Miller. Mr. Goodling?

Mr. Goodling. You spoke so rapidly and I wrote so raipdly in all the margins of my paper I will just try to make some comments and ask questions and have you respond to what I think I wrote in reference to what you are saying.

I think we ought to be very careful that we don't overgeneralize on this business of "are they helping children?" I think you realize the superintendent, the school administrator, must be responsible for 100 percent of the student body and there are times, I am sure, that in order to help 95 percent he or she must do something that they would rather not do with the other 5 percent. So I think we ought to be careful that we don't overgeneralize.

Second, nonviolent and nondangerous doesn't surprise me a bit. This is not the usual reason for suspension. I think it is the regular and continuous disruption, the teacher teaching 200 students a day, 30 students a period and so on who is going to have a problem coping with this.

You indicate a real interest in recordkeeping on discipline and on the other hand you are very concerned about records being passed on. This is a concern of mine. I would see to it specifically that they would not be passed on so that someone would not start to label a youngster before he or she had an opportunity to teach them. So I think there is a little inconsistency here somewhere along the line.

Have you done any studies of the relationship to suspensions in home situations?

Ms. Edelman. No, except that we did talk to 6,500 parents in the process of doing our own report. I think there are some bad parents just as there are some bad school officials. We find a large majority of parents want their kids to be disciplined, want their kids to go to school. If they knew more about what is going on in the schools they would be more supportive.

We found that parents on the whole are excluded from most major school decisions about their children. They might not even know when their kid has been suspended. They don't know if their children have special education needs.

We have got to build better ties between schools and communities because I think most parents want to do more and would back up the school if they knew what the problems were.

Mr. Goodling. It is difficult for me to understand at this day and age how a student could be suspended and his parent not know it because of all of the ramifications. If the student is out on the street and the parent thinks he is in school you have a real serious problem. We always made sure they were delivered to the door and we saw the parent when they were delivered.

Ms. Edelman. We have found instances where no notice was sent home.

Mr. Goodling. We never sent a notice because children get to the mailbox first.

Ms. Edelman. There are few school districts that will take children to the house and talk to the parents. One of the things I would like to see is that you call up the parent on the phone and have the parent come in before you put that kid out. A lot of parents have to work, Congressman. But again they will do it if they have the information. On the whole I think you have got to blame the schools as much as you can blame parents for the lack of communication that goes on about important decisions affecting children.

Mr. Goodling. Your reimbursement is based on school attendance. I find a little problem here in the fact that the youngsters are suspended for not attending and we are concerned about the fact that while they are suspended they are not learning. But they are suspended because they didn't attend anyway.

I don't think there is a simple way to get youngsters to attend school who have been turned off. I think there is a way to make sure this doesn't happen in preschool, elementary and so on.

You made a statement that nine times more secondary school youngsters are suspended than elementary.That doesn't surprise me. In rearing youngsters and working with youngsters, the frustrations build and build. The problem is going to manifest itself in the sixth, seventh and eighth grades and so on up the line.

Ms. Edelman. To give school officials credit, we know that some have managed to take the most alienated, the most turned off. We have a profile of Philip Viso who has opened up a school for all the toughs who have had trouble with the law and somehow made it mean something to them and put them back into a community of learning. And he suspends nobody. The achievement rate is very high and the rate for going on after that school is very high.

I just want to respond very briefly that I don't feel there is any inconsistency on the recordkeeping issue. I think that you can maintain discipline records for 2 years which will comply with the kinds of concerns that you and I both have about information being shared around and destroyed after 2 years so that we can evaluate policies without jeopardizing students.

There is no inconsistency in supporting the OCR requirements and at the same time protecting the rights of students and parents.

Mr. GOODLING. I think computerized scheduling has added to this problem. When we schedule each individual student we have an opportunity to say now this youngster isn't going to make it with this particular teacher. Now it is churned out of a machine and so on.

Should rules and regulations be written differently whether you are black or whether you are Asian or whether you are whatever? You indicated you were talking about some rules and regulations. It seems to me it would be difficult to write a different list of rules and regulations for different youngsters in the same school.

Ms. EDELMAN. We are asking exactly the opposite. We are asking that the rules not be written differently for children and that they not be enforced differently for children. What we are finding is the latter, not the former.

Mr. GOODLING. But I call your attention to the fact that if the school district has a policy that there are to be no handbands——

Ms. EDELMAN. I think it is a question of what is an essential disciplinary infraction. The schools have got to rethink what are the essential grounds for discipline. Shall we discipline a child because he is wearing a scarf or because he is chewing gum or because he is truant and tardy? School officials have got to begin to prune offenses to those absolutely essential for maintaining the educational process and then be sure they are not enforced in a discriminatory manner.

The vast majority of reasons why we suspend children now are indefensible from educational terms.

Mr. GOODLING. I think you need to be careful that you don't oversimplify this matter because many times a youngster wants to try that rule and regulation and will push you to the nth degree and the student can become disruptive by the very way they dress.

Ms. EDELMAN. We are not taking the public position in this report or in our work that school officials can't determine what a problem is or when it disrupts a classroom. We are simply saying that they should not have that penalty for that conduct. This is not permissiveness. We are not saying that children shouldn't be punished for these things. We are saying that suspension is an inappropriate punishment in the range of school punishments or devices, from detention after school to denying them access to extracurricular activities, to many things that we set out in our report. Exclusionary devices such as suspension are inappropriate for most offenses within the schools because you have got to balance off the need for education against the need of the school. We are not saying that you should be permissive. We are saying that this device is not appropriate.

Mr. GOODLING. Before the chairman rings the bell, I have gone down the left side of my margin. You can respond if you wish as I finish.

One of the things I found supervising student and teachers both in Pittsburgh and Harrisburg was that with many black teachers and black administrators I had a feeling that they weren't very patient. I say that because they wanted so much for those youngsters to succeed that they became quite impatient as a matter of fact. I don't know whether you witnessed this or not.

You talk about silly suspensions. I am sure there are plenty. However, I think in many instances that suspension didn't come on the first offense, that it may have been an accumulation of three, four, five, six, seven offenses.

Ms. EDELMAN. The evidence does not support that. One of the things we have been concerned about has been the lack of less drastic means having been tried prior to suspension.

School officials might well be protected by the kinds of reporting devices OCR has because they would have that demonstrated in some written way. It has been confirmed by many school officials that suspension is being used as a first resource.

Mr. GOODLING. Two principals out of the 14 in the county in which I served for a long time, there is no question in my mind that they don't realize that sometimes you have to take one step backwards and two steps forward. The other 12 principals do in those high schools and do a good job, of taking that step backward and closing their eyes on occasion.

One other statement you made, that a good principal can make a good teacher a better teacher. I agree 100 percent with that. I question very much whether the good principal can bring the bad teacher to be a good teacher. Over the years I have discovered it is difficult if they don't have the makings of a good teacher.

Ms. EDELMAN. I think the analogy may be more apt with something Martin Luther King said years ago about the role of law, in that the law can't make white folk love black folk but it can sure stop white folk from lynching black folk. While it may not be that a good principal can make a bad teacher a better teacher in the classroom it may make him stop suspending them if he had a policy that says, "We are going to make you go through a number of steps before you suspend them."

He could deal with the outside evidence negatively, it seems to me.

Mr. GOODLING. The teacher doesn't have the right to suspend anyone in our State.

Ms. EDELMAN. Many do in practice.

Mr. GOODLING. The principal has to do that.

I have no further questions.

Mr. MILLER. Thank you, Ms. Edelman.

Ms. EDELMAN. Thank you.

Mr. MILLER. Our next panel of witnesses will be from the school boards and school administrators. I understand somebody on the panel has a 1 o'clock plane. Dr. Steinhilber has a 1 o'clock plane. Why don't we start off with you if you would like to summarize or however you want to handle this. It is your plane. Then we can put questions to the rest of the witnesses.

STATEMENT OF DR. AUGUST W. STEINHILBER, ASSISTANT EXECUTIVE DIRECTOR, OFFICE OF FEDERAL RELATIONS, NATIONAL SCHOOL BOARDS ASSOCIATION; ACCOMPANIED BY MICHAEL A. RESNICK, DIRECTOR OF LEGISLATIVE SERVICES, NATIONAL SCHOOL BOARDS ASSOCIATION

Dr. STEINHILBER. Thank you very much. We request to have our statement accepted for the record. I will summarize briefly. I hope you don't mind if I leave in about 10 minutes. Mr. Resnick will be here to answer any questions.

[Prepared statement of Dr. August W. Steinhilber follows:]

PREPARED STATEMENT OF AUGUST W. STEINHILBER, ASSISTANT EXECUTIVE DIRECTOR, OFFICE OF FEDERAL RELATIONS, NATIONAL SCHOOL BOARDS ASSOCIATION

Mr. Chairman, my name is August W. Steinhilber, and I am the Assistant Executive Director for Federal Relations of the National School Boards Association. I am accompanied today by Michael A. Resnick, Director of Legislative Services for the Association.

The National School Boards Association is the only major education organization representing school board members—who are in some areas called school trustees. Throughout the nation, approximately 80,000 of these individuals are Association members. These people, in turn, are responsible for the education of more than 95 percent of all the nation's public school children.

Currently marking its thirty-fifth year of service, NSBA is a federation of state school boards associations, with direct local school board affiliates, constituted to strengthen local lay control of education and to work for the improvement of education. Most of these school board members are elected public officials. Accordingly, they are politically accountable to their constituents for both educational policy and fiscal management. As lay unsalaried individuals, school board members are in a rather unique position of being able to judge federal, state and local relationships, such as school districts' discipline policies, purely from the standpoint of public education, without consideration to their personal professional interest.

Our Association has long championed civil rights issues. Just this past year our delegate assembly adopted the following resolutions:

3.1 *Quality Integrated Education.*—The National School Boards Association strongly endorses the concept that education for participation in a complex, racially integrated society requires local and state officials to take affirmative action to provide and maintain a quality integrated educational experience. While the NSBA realizes this to be a national concern, the various methods used to accomplish and maintain this educational purpose should be devised and employed by local school boards, with primary emphasis on the development and use of imaginative individual instructional programs that are designed to meet the unique needs of each child.

Any legal method to accomplish these purposes should be decided at the local board level. Necessary means to achieve quality integrated education can best be devised by local boards of education.

Federal funds should be made available to local boards to carry out plans that adequantely meet these needs. In addition, the NSBA recognizes a need for more effective participation in this effort by other community institutions, both public and private, and calls upon them to join in this effort.

3.5 *Women and Minority Representation in Education.*—The National School Boards Association encourages greater involvement of women and minority group representatives in the governance of education. We urge the members of local boards of education to encourage the candidacy of women and minority candidates for the local board of education. The NSBA further endorses greater participation by women and minority representatives at all levels of state school boards association and National School Boards Association activities.

It is in light of this philosophy we developed today's testimony.

Mr. Chairman, the Office for Civil Rights and the Children's Defense Fund have conducted surveys which suggest that racial discrimination may be involved in the area of student suspension. It is probably because school suspensions involve over 4% of the student population each year that the Office for Civil Rights has issued its recent guidelines. Our statement today is directed at placing the points of advocacy within the full context of the problem and to discuss OCR's remedies thereto.

Mr. Chairman, in addressing the question of whether school discipline is unnecessarily or improperly excluding students from public education, we believe that a series of separate issues are raised. While these issues are closely related, unless they are separate there will be some confusion in defining the problems and the appropriate remedies. Within this introductory setting, our statement deals with four basic questions:

1. To what extent are students being denied an education because of school suspensions?
2. Does the incidence of such suspensions fall disproportionately on minority group children?
3. Is racial discrimination associated with a high incidence of minority group suspensions, and, if so, should the Office for Civil Rights take corrective action?
4. To date, has the Office for Civil Rights taken an appropriate role?

1. TO WHAT EXTENT ARE STUDENTS BEING DENIED AN EDUCATION BECAUSE OF SCHOOL SUSPENSIONS?

The extent to which students are being excluded from public education because of school suspensions raises two questions. First, within the context of all the reasons why students are out of school, is suspension a major factor? Second, for what acts of misconduct are students being suspended?

A. IS SUSPENSION A MAJOR REASON WHY STUDENTS ARE OUT OF SCHOOL?

According to a recent Children's Defense Fund (CDF) publication entitled *Children Out Of School In America*, 4.2%[1] of the school-age population had not attended school for three consecutive months and thereby presumed "not enrolled", and 5.9% had missed at least 45 days or more of the school year surveyed.[2] The frequency of absence for students ages 15–17 was about 3 and ½ times that of other students—which skews the overall finding and poses a separate kind of problem for school systems.[3]

Of those children who missed 45 days or more, about 11% did so on the grounds of suspensions or expulsions. Other major categories included 1) didn't like school (27.8%), 2) truancy (10.3%), 3) and injury or special education problems (14.8%). Pregnancy, marriage, employment, and lack of money together constituted over 18% of the reasons for long term absences.[4] In addition, while a precise figure would be speculative, we suspect that a significant percentage of students would be out of school for one of these other reasons if they had not been suspended. Hence, our first conclusion is that long term absence is a problem of which suspensions are just *one* facet.

From the foregoing, it would appear that public schools could retain the most students by providing; better programs for students aged 15–17 (including work-study and income opportunities), and, most importantly, support for the problems associated with poverty and special education needs. Restated, if schools did nothing other than change their suspension policies, it would marginally diminish and certanly *not* eliminate the overall exclusion problem.

In addition to the students suspended for 45 days or more, there is a much larger group who are suspended for lesser periods of time. According to OCR, in the 1972–73 school year 4.2% of the school-age population surveyed were suspended. However, CDF figures also indicate that the duration of the average suspension is 4 days and that 60% of the students are suspended one time.[5] Hence, our second conclusion is that in the overwhelming number of suspension cases, it cannot be seriously charged that school systems are depriving children of an education. Indeed. in many school systems, the student is required to keep up with work while under suspension.

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[1] Based on 1970 census data, see *Children Out of School In America*, page 34.

[2] CDF's own survey of 30 areas, which may or may not be a representative sampling, Op. Cit., pages 43–55.

[3] According to the referenced census data, 2.9 percent of the 7–15 age range were out of school, whereas 10.3 percent of the 16 and 17-year-old age range were out of school.

[4] CDF survey of 30 areas in *Children Out of School In America*, page 19.

[5] OCR survey of 2,862 school districts covered about 50 percent of the school-age population and 90 percent of the school-aged minority population.

B. WHY ARE STUDENTS BEING SUSPENDED?

Apart from the prevalence and duration of school suspensions, CDF believes that students are being suspended for reasons which don't justify that kind of penalty. Their study classifies the grounds for suspensions as follows: fighting (36.6% of the cases), truancy and tardiness (24.5%), behavioral problems (13.6%), verbal confrontations (8.5%), and others including smoking, drugs, vandalism (16.8%).[6]

We agree that suspension should be used only if other approaches seem to fail—especially in the area of truancy. However, we cannot accept the notion that suspensions should be employed only if the student poses an immediate danger to persons or property. Like codes of conduct found throughout society, the suspension (i.e., temporary exclusion) has value as a deterrent, penalty, and means of removing a chronically disruptive student.

While we share in the advocacy for alternative approaches—especially those which reach the crux of the child's difficulties in school, finding the staff and funds for those purposes is not as easy as some advocates would like it to be. The reality is that the point where taxpayers define the limit on their willingness to support public education is closely related to how *their* child's educational needs and safety fit into the school's priorities. The point is that the sudden wholesale elimination of the suspension penalty will not automatically generate special services for children with conduct difficulties—and, in fact, would probably generate a counter-productive result.

Therefore, in the absence of improper motivation (e.g., racial discrimination), we support the availability of suspensions as one means for dealing with student misconduct.

2. DOES THE INCIDENCE OF SCHOOL SUSPENSIONS FALL DISPROPORTIONATELY ON MINORITY GROUP CHILDREN? IF SO, IS RACIAL DISCRIMINATION SUGGESTED?

According to CDF and Office for Civil Rights figures, in elementary schools black children are suspended at three times the rate of white children. Similarly, in high school, the rate is two to one.

At the outset, we are certain that there are a considerable number of cases in which children are being suspended for discriminatory reasons. At the same time, we believe that the statistical data which we have seen overstates the prevalence of discriminatory patterns—and does not adequately account for other suspension related factors, such as poverty, which unfortunately are statistically more prevalent among minority groups.

For example, using 1970 Census Data, we find that 11% of the school-aged children were from families earning under $4,000 per year. But, these children comprised 18.7% of total non-enrollment.[7] Similarly, while children of unemployed parents or parents employed as farm workers and laborers combined totaled 12.5% of the school-aged population, they also comprised 23.3% of non-enrollment. Again, whereas 21.8% of the school-aged population live with one parent (or by themselves), as a group they comprise 57% of total non-enrollment.[8]

Of course these figures apply to non-enrollment, not suspensions. But, if we assume a relationship between the two, and assume further that minority group children are over-represented in certain family classifications, then a major reason for the high incidence of minority group suspensions may be other than racial. Unfortunately, the studies did not offer a factual analysis of this question.

We would suggest that in order to make a case for racial discrimination through the use of broad statistics, the following factors need to be known about a school district:

What percentage of the school district's minority group children are from families of low income, single parent households, etc. What is the corresponding percentages for non-minority children?

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[6] See CDF's survey in "School Suspensions" at page 38.

[7] "School Suspensions" at page 65. Children whose parents are in $4,000 to $10,000 range comprised 34 percent of total school-aged population and 41.1 percent of non-enrollment. For over $10,000, the respective figures are 55 percent and 40 percent.

[8] The figures were computed on the basis of Tables V and VII, appearing in *Children Out of School in America*, pages 38–40.

What percentage of total suspensions does each such classification of minority and non-minority group children represent?

What is the percentage of minority group suspensions after suspensions by minority group school officials are factored out?

How do school disciplinary codes (and penalties) vary from district to district?

Apart from the legal notion of determining whether there is a basis for charging racial discrimination, we would find it most unfortunate if we swept suspension procedures away because of racial imbalance and then ignored the real solution which requires remedies associated with poverty or disruptive family life.

3. IF RACIAL DISCRIMINATION IS ASSOCIATED WITH A HIGH INCIDENCE OF MINORITY GROUP SUSPENSIONS, SHOULD THE OFFICE FOR CIVIL RIGHTS TAKE ACTION?

In discussing the possibility of OCR involvement, it would appear that the key question shifts from whether school suspension is sound disciplinary practice to whether it is racially motivated. Until the family-related questions which we have raised are answered, we cannot determine whether the figures really justify a new regulatory procedure for 16,000 school districts. The point is, would we really want to impose detailed reporting procedures on school districts with a subsequent burden of proving a lack of discrimination, if in the majority of cases, other factors were the basis for the suspension?

At the same time, we do not advocate that racially motivated suspensions should be left unattended either. To a great extent, the relatively recent Supreme Court decisions of *Goss* v. *Lopez* and *Wood* v. *Strickland* should reduce the problem. The *Goss* decision requires that certain procedural due process rights be accorded to students in suspension proceedings. *Strickland*, in the case of an explusion, held that if school officials act in disregard or in ignorance of established constitutional rights, then those school officials will be held personally liable for monetary damages. This combination of cases should be extremely helpful not just in curtailing racially motivated suspensions, but in any disciplinary action which fails to follows the rules. Furthermore, since the *Goss* decision sets high procedural standards for suspensions in excess of 10 days, the incidence of long term penalties should diminish as well.[5] It must be underscored that both OCR's and CDF's figures were developed before either decision was handed down. Therefore, the studies do not even begin to measure their effects.

4. TO DATE, HAS THE OFFICE FOR CIVIL RIGHTS TAKEN AN APPROPRIATE ROLE?

Granting, arguendo, that there is sufficient data presently available to demonstrate broad scale racial discrimination in a particular school district, the next question raised is whether the Office for Civil Rights has assumed an appropriate role to meet the problem. In this regard, we have both procedural and substantive concerns.

Mr. Chairman, as you know, OCR has implemented its student discipline "regulations" pursuant to an August, 1975 memorandum to Chief State School Officers. The authority for this memorandum is placed under Title VI of the Civil Rights Act of 1974 and Title IX of the Education Amendments of 1972.

With respect to Title VI, the broad mandate of that Act is obvious and one which NSBA supports. However, a mandate to end racial discrimination does not necessarily imply that OCR was intended to have the authority to proceed in any manner whatsoever with regard to any issue involving racial discrimination. We believe that in the area of school suspensions OCR has outstepped its bounds both by imposing extensive recordkeeping requirements on school districts and by placing the burden of proof on them. We believe that in addition to lacking specific Congressional intent, OCR's assumed role raises a judgment question. Namely, within the context of total racial discrimination, and other regulatory needs, is the incidence of racially motivated suspensions sufficient to warrant this priority? If our testimony today has addressed the right issues, the answer is no.

Although the memorandum is couched in terms of racial discrimination, Title IX is also cited as a statutory authority. Furthermore, the sex of the student must be reported in each disciplinary case. Hence, there is at least an implication that OCR's procedures may discourage "school removal" penalties for acts of misconduct which are associated more with one sex. Mr. Chairman, we are not prepared to say that students should not be removed from school, or transferred, on the grounds of fighting, for example, just because boys happen to fight more than girls. As in the case of Title VI, we do not believe that Title IX was intended to generate a massive oversight program of this kind.

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[5] CDF's survey noted that 1 percent of all suspensions exceed 10 days, see school suspensions at page 71.

Turning from the dubious authority for OCR's requirements to the procedure employed, we have strong objections. In this regard, we are concerned that a massive enforcement program has been implemented without providing interested parties with an opportunity to comment—let alone an opportunity to participate in its development. Moreover, we are concerned that these requirements are in the form of a memorandum rather than a *Federal Register* publication. As such, in addition to by-passing *Federal Register* standards, it would appear that these requirements were issued without both the pre-clearance of the Secretary of H.E.W. and the protection of a mandatory 45 day review period by the authorizing committees. In terms of precedent, the lack of a specific legal mandate, and the complicated procedures which OCR's requirements involve, we strenuously object to a non-accountable bureaucracy unilaterally taking these powers onto itself.

Finally, even if OCR had the full statistical facts and had followed proper procedures, we question the merits of its requirements.

In essence, we are talking about each school system collecting and maintaining records for OCR inspection for each disciplinary related expulsion, suspension, act of corporal punishment, referral to special classes, transfer to another school or class, as well as for records of school withdrawals, drop-outs, juvenile actions, and court referrals. Collectively, this one area of recordkeeping will involve millions of pages of material each year. As suggested earlier in our statement, given the protection of recent Supreme Court decisions in this area coupled with other possible alternatives available to OCR, why establsh a system of this kind with its negative presumption on school districts? Apart from cost, because of other factors correlated with minority suspensions, broad statistical findings in themselves do not conclusively prove discrimination. Does OCR intend to have Chicago prove that its more than 28,600 suspension cases were not racially motivated?

Another important facet of OCR's recordkeeping requirements is its interest in the acts of misconduct for which students are suspended. It is our view that there is a distinction between questioning the substance of a disciplinary code and questioning whether that code is being applied in a discriminatory fashion. We hope that OCR is not moving toward a federal screening process which would override community values in this area of student discipline.

Perhaps some of the problems which we can perceive with OCR's requirements are exemplified with recordkeeping for "drop-outs". If we assume that high minority group drop-out rates in the 15–17 year age group carries a presumption of discrimination, what corrective action can a school system take? If the state raises the compulsory attendance laws, there is no enforcement mechanism since the application of truancy provisions would carry the same presumption. Or is OCR now in effect requiring that there be some affirmative program to keep these students in school? Curriculum involvement of that kind must be distinguished from OCR's current role of identifying improper racial balance in student assignments.

On the other hand, if we are looking at cases of individual students, what does OCR expect to find in these records to prove that a particular principal, because of racial attitude, was causing a high minority-group drop-out rate?

Finally, how does OCR's recordkeeping requirements square with the Buckley Amendment to the Education Amendments of 1974? We believe that one effect of OCR's procedures will be to increase the number of disciplinary actions which appear in the student's permanent record.

CONCLUSION

Studies by both the Office for Civil Rights and the Children's Defense Fund are important efforts in developing greater general awareness and sensitivity for the needs of children who leave school—especially through school suspensions.

At the same time, we hope the Committee will appreciate that seeking funding for high cost poverty programs, special-education programs, vocational programs, etc., is not automatic. Similarly, special programs as alternatives to long term suspensions will even have greater difficulty in generating public support. In this regard, I believe we have shown that school suspensions are only one aspect of why children are out of school. While 4% of all students are suspended each year, the overwhelming number do not miss more than a few days. Therefore, while the public schools ought to find better ways of dealing with children who pose serious or continuous conduct problems, they must do so within the context of all children requiring special educational programs.

Regardless of alternative programs, suspension should remain available as a means of deterring or penalizing those students who are not making an effort to correct conduct, as well as to remove those who pose dangers or disruptions with which school officials simply cannot deal.

The Office for Civil Rights has determined that racial patterns exist [illegible] school suspensions and as a result, it has set up a complicated recordkeeping system—with the burden of proof on the schools. Under the weight of these requirements, the racial issue will be the fulcrum for doing away with suspensions altogether. In light of our foregoing conclusions, that would be unwise.

At the same time, we are distressed that OCR's figures do suggest racial discrimination. To some extent these figures may be overstated since they do not take into account family life factors, such as income, which are over-represented in both minority group households and in cases of school suspensions. It is because of these factors and because school discipline policies vary from district to district that comparative raw numbers do not suggest racial discrimination in the way they do in pupil assignment policies. Therefore, the burden of proof shifts to the school district without the same degree of probable cause. But by requiring more elements in data collection we would increase the burden of OCR's regulatory requirements.

Given recent Supreme Court decisions in the area of school suspensions and school official personal liability, we believe that the judiciary offers a mechanism for ferreting out cases of discrimination without the imposition of OCR's regulatory machinery. Both cases were handed down after OCR's survey was completed, and we therefore suggest that they be given an opportunity to work.

Finally, we object to the manner in which OCR issued its requirements. By using a memorandum the standards of the *Federal Register* were bypassed and with it the before-the-fact consultation of the education community, the Secretary of Health, Education and Welfare, and the authorizing committees.

Mr. Chairman, on behalf of the National School Boards Association, I wish to thank you and the members of the Committee for this opportunity to testify.

Dr. STEINHILBER. Let me just say a little bit about our association. More than 90 percent of our members are elected public officials like yourselves. They are unpaid public officials in most instances. There may be an exception with New York City but for the most part they are underpaid. They are dedicated toward the education of children. I would also indicate that our association has championed civil rights issues in the past. Indeed we have opposed every one of the antibusing riders to HEW appropriations and the OE appropriations. We opposed the Holt amendment. So our past posture and also our present posture here is one in support of civil rights.

However, we have some reservations with respect to what the Office for Civil Rights is saying with respect to school discipline.

Mr. Quie asked what was the Federal role? Quite frankly when I heard the previous speaker I thought it was one of our own seminars on student discipline. We are in the process of those kinds of learning experiences especially after both *Goss* v. *Lopez* and *Wood* v. *Strickland* cases came down. We have been particularly active in running seminars and training programs for school board members.

One of my questions is that of the appropriate role of the Federal Government because we not only have constitutional issues here but we have educational issues. I think that is an issue that has to be looked at very carefully because the power of an agency to develop rules and regulations and guidelines, memorandums on educational policy puts us a stop down a long direction which I think none of us here are really prepared to move.

In our testimony we ask basically four questions.

To what extent are students being denied an education because of school suspensions?

Does the incidence of such suspensions fall disproportionately on minority group children?

Is racial discrimination associated with a high incidence of minority group suspensions and if so should the Office for Civil Rights take corrective action?

To date has the Office for Civil Rights taken an appropriate role on this issue?

I might add, is suspension a major reason why students are out of school? I don't think the facts prove it. I do have a whole list of facts which were taken out of the Children's Defense Fund publication "Children Out of School in America." According to the OCR 1972–73 school year only 4.2 percent of the school age population surveyed was suspended. The average date of suspension was 4 days; 60 percent of the students were only suspended once. If the average suspension is only 4 days can we really say that children are being deprived of an education in a constitutional sense? We concede that suspensions may not be good educational policy in all cases.

Why are students being suspended? Thirty-seven percent because of fighting, 25 percent because of truancy and tardiness, 13.6 because of behavioral problems.

We agree that suspension should only be used if other methods seem to fail. However, we cannot accept the notion that suspensions should be employed only if the student poses an immediate danger to persons or property. Like codes of conduct found throughout society the suspension has value as a deterrent, penalty and means of removing a chronically disruptive student.

Does the incidence of school suspensions fall disproportionately on minority group children? We would say that according to CDF and OCR records, black students are suspended three times the rate of whites. In high school the rate is two to one. We are certain that a considerable number of these cases are those in which children are being suspended for discriminatory reasons. However, we believe that the statistical data which we have seen overstates the discriminatory patterns.

We also find that suspensions are also prevalent with families of low income. What is the relationship between racial and low income? We should have more data before the Office of Civil Rights says that it is automatically a matter of racial discrimination.

I would also like to say that the data is somewhat old, old in a constitutional sense. Why? Because *Goss* v. *Lopez* and *Wood* v. *Strickland* both came out since this data was collected. I think you would see a change in the data because of *Goss* v. *Lopez*, the *Ohio* case in which a 10-day suspension by the school board was declared unconstitutional without the benefit of a hearing and because of *Wood* v. *Strickland*, which held that a school board could be personally liable if it impinged on the civil rights of an individual.

Mr. Miller. You mention in your testimony of whether we are constitutionally depriving them of an education. I don't think the Court has decided whether it is a constitutional right yet.

Dr. Steinhilber. The Court specifically did not take up that issue. We are speaking about two other facets which the courts have looked into. They are saying we are now going to have to provide hearings which was not true at the time this data came out. There is an added incentive because boards can be personally liable under the Civil Rights Act of 1871 if they make a mistake. So I question really at this time if there is that kind of a need for what the Office of Civil Rights has handed down.

I would like to point some statistics at this point. Out of 45 million schoolchildren, 4 percent are suspended. That is, about 1.8 million children are suspended. And, of that 1.8 million, 1 percent are suspended for a period in excess of 10 days. In other words, 18,000 youngsters are suspended for 10 or more days. Most of those suspended in excess of 10 days are white. Therefore we are now getting to less than 10,000 children nationwide who are being suspended for a period in excess of 10 days.

One of the questions we had is related to what took place a little earlier this morning with the testimony of Mr. Pittinger concerning a lack of consultation. I have an individual on my staff, a fine lawyer, and she was in the Office of Civil Rights literally the morning on which the suspension memorandum was released. We did not find out about it until 2 days later.

I would also contend that OCR is now getting into the filing of memoranda as a way of getting around the Administrative Procedures Act. We fought hard to see that everything that HEW puts in the way of a regulation or guideline falls in the Federal Register so that we have an opportunity for 45 days to make our comments, and, so that information must go to the chairman of the appropriate authorizing committee. Now we may now have a period of memoranda which bypass the Federal Register, without no prior consultation. Indeed we may not even have an opportunity to comment to the agency before the conditions set forth in the memorandum become effective.

I think we have to strenuously object to any bureaucracy taking these kinds of unilateral decisions and having that kind of power unto itself. I think we have a separation of powers question between the authority of an agency and the authority of Congress—as well as an improper bypass of the Administrative Procedures Act.

Mr. Chairman, I begin to realize that my time has just about subsided. I will ask Mr. Resnick to proceed if you would have any questions. Anything he cannot answer I would be more than happy to submit for the record, including any additional data that you might need. I hope you will excuse me. I do have a plane. We have a northeast regional meeting of the National School Boards Association in Boston this afternoon. I have to be there.

Mr. Miller. Thank you.

Mr. Resnick. I would like to begin by focusing on page 4 of our testimony wherein we ask the question is suspension a major reason why students are out of school? Looking at the statistics that we present we find that 27.8 percent of the students who left school did so because they didn't like school. Another 10.3 percent left school on truancy grounds. Another 14.8 percent left because of special education problems which include incidents of injury during the school year. Pregnancy, marriage, employment and lack of income combined add another 18 percent to the cases whenever children are out of school.

We don't want to minimize the question of school suspensions as a major reason why children are out of school. But there are other major reasons. We believe that if some of the children who are suspended would remain in school they would leave school for some of these other reasons which we have mentioned.

We would support the notion that more money should flow, for better training as an example, as a means to keep children in school. We support this notion to overcome all of the reasons why children are out of school, not just because of those situations where you have difficulty in dealing with children who pose a conduct problem.

Mr. MILLER. Is it your case then that because of the fact that more students leave because they didn't like school that the problem doesn't justify the memorandum?

Mr. RESNICK. Yes, that is correct. I would add to that conclusion our finding that only 1 percent—this is taken out of the CDF survey—of the suspensions were in excess of 10 days. So essentially we are talking about a few thousand cases, as Dr. Steinhilber noted, in which minority group people are being suspended for 10 days—of which only a certain segment of those will involve racial discrimination.

The question is whether we want to involve the whole administrative apparatus to ferret out these few thousand cases in 16,000 school districts while at the same time we now have a combination of cases in *Goss* and *Strickland* to accomplish that same end. Because every district having minority group children is going to have a civil rights lawyer and, at least we hope, that combination of cases will work as an excellent deterrent in order to bring down the numbers of discriminatory cases. I would hope we would have an opportunity to let this combination of cases work before we impose this apparatus especially since we are talking now of about 2 million cases of suspension a year. In addition, OCR's so-called memorandum would require reporting classroom transfers as well as the other disciplinary actions that are taken. We are talking about millions and millions of pieces of paper that have to be filed each year.

Mr. MILLER. And we are talking about millions and millions of children. Forget the paper for a minute. Isn't the point from the testimony that was here previously that the memorandum goes to the building of that record of suspension?

Mr. RESNICK. That is true. But I am not sure that in terms of the numbers of cases involved, using the CDF study data, a basic source in our whole testimony—wherein other factors such as, the income level of the parents, the education of the parents, and whether a household has one parent or two parents, if in fact the data collection required can build a case of discrimination. CDF finds that these factors have dramatic effects on the proportions of minority children who are being suspended. Page 7 of our testimony highlights that.

Using 1970 data from the census we find 11 percent of the school aged children come from families earning $4,000. But these children comprise 18.7 percent of the total nonenrollment. Similarly, unemployed parents or parents employed as farmworkers, their children comprise 12.5 percent of the school aged children but 23.3 percent of nonenrollment while 21.8 percent of the school aged population live with one parent but as a group they comprise 57 percent of total nonenrollment.

The point I am making is that obviously there are cases of discrimination. The overall figures would lead the reasonable person to conclude that discrimination does occur in some school districts. But, I am not sure that the kinds of data that OCR is requiring can conclusively prove the case that on some wide-scale basis that a particular school district is engaging in discrimination when it suspends minority children. That is why we want to see if this combination of Supreme Court cases will work. Once you get into individual cases you can correct the problem where it exists. Also, I am not sure what we would be able to do when these pieces of paper required by OCR are filed—consult a full-scale investigation in groups of cases?

Mr. MILLER. Cases have produced police review boards. They have not been very effective. If the educational institutions spend so much time talking about their problem, why are we here? Something hasn't been effective. Maybe the memorandum is excessive. But that is why we are here.

Mr. RESNICK. We are not at all trying to minimize the problem. What we are saying is the Office of Civil Rights mechanism is coming down quite heavy and it is quite extensive. For the number of cases that do exist in school districts, we are hoping that the judiciary will provide a mechanism that can ferret out these cases and at the same time not put a serious administrative burden on the school districts. That is our basic position right now.

Mr. MILLER. Mrs. Chisholm?

Mrs. CHISHOLM. Thank you very much.

I think all of us recognize that we cannot utilize the question of suspension as the only reason why minority students are out of school. The inherent racism in the society actually has put minority people in this country in all kinds of positions whereby they just don't get to the root cause but always deal with superficialities. We know there are problems of pregnancy and one-parent families and unemployment. All of these mesh into some of the reasons for suspension.

But what we are concerned about—what I am concerned about—is two things. First of all that this disproportionate number of suspensions of minority students—not only blacks because I have gone around this country and I am talking about Chicano students and the Indian students—in terms of their actual population tells us something that makes us uncomfortable.

Second, in my own situation in New York just looking at the number of situations or circumstances where students were suspended in the same school black and white students I came across constantly variances in the penalties. I am not talking about economic and supplementary social effects. I am talking about the equity of the penalties involved.

This has to lead us to the conclusion that there are racially motivating factors in the same school when a black student and a white student can do the same thing. Yet they are treated differently.

I was just involved in a situation, a football situation, in one of the high schools in Brooklyn where every one of the black and Puerto

Rican students were suspended and seven white students, one of whom had initiated this whole confrontation, were not. This is what disturbs me. We sweep this under the rug and hope nobody will talk about it.

I am talking on the basis of real life situations. I agree that there are other factors that have to be taken into consideration. But there is an inherent racism in our society that causes us to not want to deal with the basic issue.

Mr. **Resnick.** I couldn't agree more with you, especially the first point which you make indeed, where we say that the school systems, if they want to avoid the taxation of these OCR forms, should stop suspending students, that is not solving the problem. The problem is the step of how do we keep these children in school? How can we serve the special needs that they require?

Mrs. **Chisholm.** How do you answer the question about just equity of penalties within a school with respect to the student body? How do you answer that question?

Mr. **Resnick.** Quite obviously when two children are treated differently——

Mrs. **Chisholm.** How do we get around that problem, the fact that academic preparation itself does not necessarily bring the kinds of attitudes that the individual needs? How do we handle that?

Mr. **Resnick.** We don't necessarily agree with all the conclusions and approaches taken by the CDF study. I am glad that Ms. Edelman mentioned the number of school districts that are developing a sense of self-awareness. I am hoping that school systems will have more internal memoranda to principals as to what they should do in the cases of suspensions.

We are hoping they will look at the severity of penalties. But where, for example, a student is sent down to the principal's office for an hour for doing a certain deed and another student is sent down for 2 hours, that is not the problem we are looking at.

The problem is where one student is suspended for 5 days and another is suspended for 10 or 15 days for doing precisely the same act. This is why we want to see, if this has an opportunity to work, if the Supreme Court cases can be brought into that kind of problem.

Mrs. **Chisholm.** I have no further questions.

Mr. **Miller.** Thank you very much.

Mr. **Resnick.** Thank you.

Mr. **Miller.** Our next witness is Mr. James Kirkpatrick, American Association of School Administrators and Mrs. Beatrice Gustafson, coordinator of pupil services, Fairfax County Public Schools, Va.

Proceed.

STATEMENT OF JAMES KIRKPATRICK, AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS AND MRS. BEATRICE GUSTAFSON, COORDINATOR OF PUPIL SERVICES, FAIRFAX COUNTY PUBLIC SCHOOLS, VA.; ACCOMPANIED BY BARRY MORRIS

Mr. **Kirkpatrick.** Mr. Miller, I had a statement that I was going to preface my introduction to Mrs. Gustafson but I am not going to do it. I would also like to introduce Mr. Barry Morris, the associate superintendent of Fairfax County Schools, Fairfax, Va.

It seemed to me that as we were looking at the lineup of the various witnesses here this morning that you had any number of excellent people who speak to the national or global view and it seemed appropriate to us that there should be the opportunity for the committee to hear the comments and observations of a person who is working in this field on a daily basis.

We have with us Mrs. Gustafson, who is the coordinator of pupil personnel, Fairfax County. So I will turn the mike to her.

Mrs. GUSTAFSON. Thank you.

Mr. Chairman, and members of the committee, I am Beatrice Gustafson, coordinator for pupil services of the Fairfax County Public Schools, Fairfax, Va. I am representing Dr. S. John Davis, Superintendent of the Fairfax County Schools and the American Association of School Administrators. On their behalf, I would like to thank the chairman and members of the committee for the opportunity to appear here today to share our concern regarding the recently anounced Office of Civil Rights requirements for the maintenance of records for student disciplinary actions.

I would like to provide some general information about the Fairfax County Public Schools, describe our current policies and procedures for disciplinary actions and for maintaining records of such actions; and indicate the impact the new recordkeeping requirements have on our schools.

Fairfax County is a suburban county of the Washington metropolitan area, encompassing 406 square miles of northern Virginia. The estimated population of the county as of July 1975 was 552,000 residents. Fairfax County Public Schools is the Nation's 13th largest system with an enrollment of 137,081 students attending 162 schools, including 22 high or secondary schools, 17 intermediate schools, grades 7 and 8, 123 elementary schools and 12 special education centers. The students reflect a diverse, multicultural population of which 5,329 are black, 69 are American Indian, 1,231 are of Asian descent, 1,336 have a Spanish surname and 128,409 constitute all other categories.

Our school system is committed to establishing an educational climate that will foster maximum learning opportunities for all students and will result in their development into adults who can stand confidently, participate fully and contribute meaningfully in their world. The Fairfax County School Board places responsibility for achieving this upon every member of the school community. It has adopted an explicit policy for human relations which states in part that "it is the expressed intent of the school board that every policy, practice and procedure shall conform to all applicable requirements of Federal and State law" and that the implementation of policy "shall be achieved without prejudice to race, sex, color, age, intellectual ability, national origin, creed, economic status, political belief or cultural background."

Our school system, as have most others, has adopted policies and procedures not only in the area of human relations but also in the areas of student rights, teacher rights, due process and equal opportunity, among others, in a concerted effort to guarantee equal rights and opportunities for all students and employees of the school community. Thus, we share the concern of the Office of Civil Rights that there be no discrimination in the operation of any of our programs.

Specifically, in the area of student discipline the school board adopted in July 1971, a policy on responsibilities and rights for intermediate and secondary students which was revised in October 1974. In August 1975, a similar policy was adopted for elementary students. These documents forthrightly state the policies and procedures of Fairfax County Public Schools with respect to the student's responsibilities and rights and to the rules which govern student conduct in schools. The section on disciplinary procedures includes a variety of corrective measures authorized for the breach of rules or obligations applicable to students and provides explicit due process procedures which must be observed when taking disciplinary action. An extensive effort was made this fall—including the use of a locally made film and the visitation to each school by a school board member-administrator team—to ensure that each student and staff member understood the policies and procedures.

As provided by the policies, when misconduct does in fact threaten the welfare of the school or of other students, disrupt the educational process or deprive other students of an effective opportunity to pursue their own education, school officials may take action to temporarily exclude or suspend a student or recommend his or her expulsion from school. Expulsion requires the action of the school board. Corporal punishment, while not encouraged, is allowed by the State law and under our policy may be administered only with the expressed consent of the parent.

Suspension, expulsion, and corporal punishment comprise three of the five categories required for reporting by OCR in addition to data regarding dropouts and court referrals. In Fairfax County these three actions require on the part of principals four separate administrative procedures. Suspension, in itself, requires:

An informal hearing between the principal and the student notifying the student of the reasons for the actions and the nature of the evidence and offering the student an opportuity to respond,

Notification of the student of his or her right to appeal,

Notification of the parents at once by telephone of the actions being taken, informing them that a copy of the policy detailing the rules and the procedures for appeals is being sent and mailing or hand-delivering written notification to the parents outlining the reasons for the action and the procedures to be followed as well as the right to appeal.

Providing classroom assignments for the duration of any exclusion from school.

Suspension is authorized for 5 schooldays or less unless extended by a superintendent who will do so only after holding a heaing on the matter according to set procedures which include advance written notice, the right to be represented, written findings and recommendations and the right to appeal. We are advised that these proceduers extend beyond any legal requirement, such as those set by *Goss* v. *Lopez* and are fully endorsed by our school board, which has stated that due process guarantees are the right of every student.

The principal of each of our 162 schools has been required to submit a weekly report of all disciplinary actions. A one-page report form provides an entry for each student for whom some action was taken and requests the racial/ethnic designation and sex of the student, the grade level, the school attended, the reason for the action, the length of any exclusion from school and whether a parent conference was held, the normal disposition of a case. The principal attaches a copy of the letter sent to the parents of each child. This reporting procedure has provided data enabling a continuing review of disciplinary action and goes beyond that previously requested by OCR. Previously the data required by OCR was contained on Form OS/CR 102 and asked for the number of pupils suspended during the previous school year by ethnic designation and the total number of suspension days during the previous school year by ethnic designation.

The new recordkeeping requirements specifically extend beyond what is currently being maintained by Fairfax Public Schools by requiring (1) a concise procedural history of each disciplinary case from the initial reporting of the offense through final disposition of the case, (2) designation of which alternatives to the disciplinary action, (3) a log or logs of any informal hearing conducted by the school principal, (4) complete entries for referral to special classes or schools for behavior modification and transfer to another class or school, and (5) a log of referrals of discipline cases to courts or to juvenile authorities.

One of the principal effects of the additional recordkeeping requirements will be to increase the amount of time a school administrator must spend doing paperwork to document each case. It is estimated that the average disciplinary case—from the time of the original reporting through considering alternatives, conducting an informal hearing, telephoning the parent, drafting a letter, obtaining school assignments and making arrangements for the student to reach home—is at least 1 to 2 hours. The additional form or forms which would be required, as well as the writing of a log of the informal hearing, is estimated to increase this time by at least a half to 1 full hour. Thus, in our school system, there will be an additional loss of many hours of needed administrator time, time needed for increased direct contacts and interaction with students in order to maintain an adequate educational program and learning environment. The loss is that of the students and the direction is toward more documentation with less personal interaction.

A second effect of the new recordkeeping requirements is to increase the amount of other staff and monetary resources necessary to maintain the recordkeeping system. For example, we estimate, given our understanding of what is being required, that the accounting procedure will require a separate two-page form to be completed for each student excluded from school, temporarily suspended or recommended to be expelled. Two separate additional forms will be required to collect information regarding corporal punishment and referral to juvenile court. Still two other forms would be required to provide all of the requested accounting information regarding referrals to special classes and transfers to another class or school. Thus a one-page weekly report will become, in our system, a five-form multipage report. Aside from the cost of generating additional forms, there is the additional cost to provide personnel and computer time to store, generate and anlyze the data.

In the day of increased concern for the size of school budgets and the allocation of these resources within the school system, increased costs for additional record maintenance must be evaluated against the needs for books, supplies and teachers.

In addition to the effects of increased time and money, there are three remaining concerns that we have regarding the request. The first is the difficulty we have had in trying to determine exactly what some of the requirements are. For example, the kinds of disciplinary actions for which records should be kept include referral to special classes or schools for behavioral modification and transfer to another class or school.

In our system, while we do not have a special class or school for social adjustment as some systems do, we do have an extensive special education program. Referral to these programs and transfers to other classes and schools are regarded as educational decisions necessary, in some instances, to meet specific educational needs of students. Surely OCR is not expecting complete reporting of each of these thousands of referrals and transfers. And if so, what is considered a disciplinary action in this area? Further, there is uncertainty, for example, as to what constitutes a procedural history or what kinds of alternatives should be listed an recorded.

In an attempt to seek clarity, a staff member telephoned OCR to ask if there were further guidelines or new forms available which would assist us in drafting new procedures and forms to accommodate the request. He was informed that there were no additional guidelines and that no new report forms had been drafted.

While we are not suggesting the need for more Federal guidelines or forms, we are concerned that such a request as this one will cause many school systems to divert extensive resources in time and effort to be sure that it can withstand one of the ever-increasing Federal audits. We are also concerned that a local school system is asked to react directly to general and prescriptive requirements from a division level office within HEW. We consider ourselves governed by State and local school boards which are competent to issue such regulations and we are uncomfortable in receiving this kind of direction when it has not been coordinated through these channels.

Our final concern is whether the kind of statistical summaries generally requested by OCR can be shown to demonstrate proof of discrimination. It is the opinion of many of our principals that the heart of the discipline issue is whether a disciplinary action was merited given the nature of the offense and/or the student's previous history.

None of these aspects of student discipline are reflected in the OCR request, nor could they be, as they are more qualitative and do not lend to statistical summary. Therefore we wonder if all of the requirements are reasonable or necessary or whether less confusing, more simple recordkeeping might provide the OCR data appropriate to its needs.

In summary, Fairfax County Public Schools shares the OCR concern for discrimination and has adopted policies and procedures intended to protect the rights of all students and to provide equal opportunity. Fairfax County Public Schools has instituted specific due process procedures with respect to student disciplinary action and has maintained a recordkeeping system adequate for a continuing review and for meeting OCR's previous reporting requirements. We are concerned that the new recordkeeping requirements will involve an unnecessary and unreasonable amount of increased staff time and an undue share of precious resources. We are concerned that should the requests stand, they be coordinated through the State board of education. Finally, we ask that an evaluation be made as to whether there isn't a simpler approach which will address OCR's primary concern.

Mr. Miller. Thank you. A couple of questions. On page 4 you mention that you require an informal hearing between the principal and the student. What is usually the effect of that hearing?

Mrs. Gustafson. The student is given an opportunity to explain what he feels he has done, what his involvement has been. If it is reasonable or what have you the case may be dismissed. It may be an error. It is an oportunity to make sure that the student learns what he is accused of or may be susended for.

Mr. Miller. Is a record of that formal hearing made, the fact that it took place?

Mrs. Gustafson. The principal is obligated to make a statement, including the reasons. An accounting system is one where we would be collecting information on a countywide basis so that it is recorded on a form and kept in the student's records.

Mr. Miller. What percentage of the cases are dealt with in a final manner with that hearing or meeting?

Mrs. Gustafson. You mean as a result of that?

Mr. Miller. In what percentage does the principal say, "Go back to class and don't do it again?" In what percentage of cases is the student suspended or reprimanded?

Mrs. Gustafson. We don't keep a record of those. We only keep a record of when the case is brought to its full disposition, which is also being required by OCR.

Mr. Miller. Can you give me the ethnic breakdown for Fairfax in regard to suspensions?

Mrs. Gustafson. In terms of the overall student population, black students represent about 3.9 percent of the population, other ethnic groups about 1.8 percent, somewhere in there.

In terms of suspensions they represent about 10 to 11 percent of our suspensions.

Mr. Miller. In Arlington you had figures of 17 percent of the blacks suspended versus 3.6 percent of the whites in the Arlington School District.

I guess I have no further questions. I am very interested in the procedure that you have set up. We are right in the middle of a conference on the handicapped. We are looking at procedures.

One of the things in your statement that disturbs me and you may want to respond to is you say on page 7 that OCR should not expect a complete reporting of these transfers to other classes. There are a lot of ways to discipline a child, many of which I think are detrimental rather than in a positive way without suspending that student and in effect excluding them from the mainstream of education.

Mrs. Gustafson. Correct.

Mr. Miller. Yes?

Mrs. Gustafson. We have other procedures outlined as corrective measures which are short of excluding a child from school.

We do maintain records on referrals. But to supply a precise history of referrals and an accounting for all the actions taken, that is our point.

Mr. Miller. Mrs. Chisholm?

Mrs. Chisholm. I don't have any questions. I only hesitate because although the outline of the demographic information obtained for Fairfax, Va., have been in my office, very concerned about some aspects appearance that a student is given a hearing and is informed of his right to appeal and there is notification of the parents.

I can only say at this point that a number of minority parents from Fairfax, Va., have been in my office, very concerned about some aspects of the school system there. I am not familiar with all the details of what happened. But some of the issues and concerns they did raise are some things that I have been raising all day at this hearing, the inequity of response to certain situations.

Everybody has agreed today that you have to take into account economic and social factors, family disorganization and other factors that we know do have a bearing on a total situation, inequities for similar behavior patterns in a school system. That is all I have to say.

Mr. Miller. I think counsel has a couple of questions.

Mr. Cross. Was your organization consulted by the Office of Civil Rights before this memorandum was issued?

Mrs. Gustafson. No; it was not.

Mr. Cross. Have you been in consultation with them since?

Mrs. Gustafson. We did try to see how we were going to meet the requirements as a school district.

Mr. Cross. Perhaps Mr. Kirkpatrick could answer that for the association?

Mr. Kirkpatrick. The answer is the same, "No."

Mr. Cross. Have you supplied them with any advice, unsolicited advice, on questions such as defining "disciplinary action"?

Mr. Kirkpatrick. We simply have been given no opportunity. Our experience was somewhat similar to that related by National School Boards Association. These things were on their way out in the mail before we were even aware that they were being treated.

Mr. Cross. Have either of you formed a definition of what kind of "disciplinary action" is covered by this memorandum? Do you know whether requiring a student to remain after school for additional work is considered as discipline and thereby covered by the memorandum?

Mrs. Gustafson. We have tried to translate their categories to our definitions as provided by policy. I did bring some copies of our students' rights policy. Those categories covered are suspension, expulsion, corporal punishment. Since we don't have school for social adjustment we decided that those don't apply. But we have no way of knowing.

Mr. Cross. A final question. Two or three witnesses have raised the issue of whether this should have been published as a regulation and subject to comment with an opportunity for review. Does the AASA have any point on that?

Mr. Kirkpatrick. Frankly, we would prefer to see it in the Federal Register so that it would give us an opportunity at least to make comments. The problem now for us is that we are getting inquiries from all over the country saying, "Must we comply" or "What is the legal status of this particular thing?"

I heard the OCR spokesman this morning explain the justification for it. But I would suspect or speculate that there may be some question as to whether that particular point of view would stand. We are getting a lot of questions as to just what the legal status is.

Mr. CROSS. Are you referring them to OCR for their answers?

Mr. KIRKPATRICK. I haven't. But you have just given me a good idea.

Mr. CROSS. Thank you very much.

Mr. MORRIS. May I comment briefly on that? I am again Barry Morris. I am associate superintendent of Fairfax County schools. We didn't feel we needed more regulation or guidelines from OCR on this. This has created a certain amount of confusion, as Mr. Kirkpatrick indicated. I think you can see from Mrs. Gustafson's testimony that we have gone through just recently and enacted last year a very carefully developed policy and procedures in regard to student rights and responsibilities. We did this with a great amount of parental involvement to develop the due process provisions in it. Just this fall we developed the same thing for the elementary level.

This guidance from OCR means we have got to go back and look at our policies and our procedures to see if we comply with that and if we want to do it properly go through the whole process.

We know the problem needs to be addressed carefully. We think we have done so. We would prefer to interact with our local communities and State guidelines rather than receiving this kind of sudden guidance from the Federal Government, which has driven us into confusion.

Mr. MILLER. Thank you.

I would like to make a comment. I am not happy with the precedent that is being set with this memorandum although I tend to be in agreement that I think some very tough action had to be taken. I don't think that means you simply steamroll people, including Congress and this committee. But they have done it.

I don't know what the decision of this committee will be in regard to that. We are in kind of a procedural box here for a while. I do appreciate the problems you will have in trying to comply. Yet whether it is Fairfax or others, where there has been such a long history of noncompliance with the rights of children you have to weigh the interests of the students and the school. Perhaps the memorandum will alert us to how many students are leaving school and it may make us ask why we make them stay there.

Thank you very much for your testimony. You will all be advised of what this committee will do, whether we will have additional hearings on the subject or whether we will try to remedy the situation. I do not know yet.

Thank you very much.

The committee will be adjourned.

[Whereupon, at 1:15 p.m. the subcommittee adjourned, to reconvene at the call of the Chair.]

APPENDIX

Prepared Statement of Hon. David R. Bowen, a Representative in Congress From the State of Mississippi

Mr. Chairman, as a former elementary school teacher and college professor, I have a personal commitment to equal and quality education. I have always been strongly committed to fair and equitable treatment of all people in the classroom, and I am quite confident that the school superintendents of my state are equally committed to equality in education.

I agree with Superintendent Paul Armstrong, President of the Mississippi Association of School Superintendents, who states: "proper rules, regulations, and enforcement are necessary to maintain any system, including public schools."

When Mr. Armstrong states, "we do not condone discrimination, either direct or inverse," I believe that he is telling the truth. I say that as one who represents a District which is 47% black and as one who received more than 90% of that black vote.

What has been proposed by the Office of Civil Rights of the Department of Health, Education, and Welfare is a step backwards in achieving quality education and one which will greatly increase the costs of the educational process.

I hope this Committee will call on HEW to withdraw these directives and reexamine them. Is it the purpose of the Office of Civil Rights to expose actual acts of discrimination or to bind and burden our greatly pressed school officials with additional layers of staff and red tape to report on unproven acts of discrimination which they imagine to exist because of some statistical patterns?

I dare say that a higher percentage of boys than girls may receive disciplinary action in American public schools, but that does not indicate that boys are being discriminated against on the basis of sex, any more than blacks are being discriminated against because they may happen to receive more disciplinary action.

It is the purpose of our educational system to help train people who can rise above the social conditions that produce the need for disciplinary action rather than to stop the disciplinary action which is needed to enable students to receive an education.

Congress of the United States,
House of Representatives,
Washington, D.C., October 17, 1975.

Hon. Carl D. Perkins,
Chairman, Subcommittee on Elementary, Secondary and Vocational Education,
Rayburn House Office Building

Dear Mr. Chairman: I am enclosing a copy of a letter I recently received from Dr. Ben Sheppard, the Chairman of the Dade County School Board. In it, Dr. Sheppard goes into great detail concerning the cumbersome burden of keeping records of racial/ethnic categories.

I though you might find Dr. Sheppard's remarks interesting and hopefully of use in the Subcommittee's work.

With best wishes, I am

Sincerely,

William Lehman,
Member of Congress.

Enclosure.

Dade County Public Schools,
Administrative Office,
Miami, Fla., October 3, 1975.

Hon. William Lehman,
House of Representatives, Cannon House Office Building
Washington, D.C.

My Dear Mr. Lehman: The current deluge of record keeping requirements emanating from the United States Department of Health, Education, and Welfare for response by school districts constitutes an administrative burden as well as an invasion of the responsibilities that belong to the state and local school authorities. There is an inherent emphasis in these requirements to effect standardized procedures for all school districts that tend to negate flexibility and impose a narrow focus which is not conducive to a realistic assessment of the problem nor its ultimate resolution.

The Dade County public school system, as evidenced by its track record, is supportive and responsive to the national goals and objectives of equal educational opportunity and affirmative action efforts enunciated through the Department of Health, Education, and Welfare. However, we believe that the current trend of bureaucratic specificity in levying reporting requirements creates additional administrative burdens, financially and operationally. Most of all, such requirements do not necessarily contribute to the resolution of the problems. The emphasis, we believe, is misplaced.

Some recent examples will serve to indicate the basis for our concern:

1. Reporting Racial/Ethnic Categories (*a*) The 1974 revised edition of *Handbook V: Student/Pupil Accounting*, published by the National Center for Education Statistics, U.S. Department of Health, Education, and Welfare Division, lists the following categories:

.10 American Indian or Alaska Native—A person having origins in any of the original peoples of the Western Hemisphere.

.20 Asian (Oriental) or Pacific Islander—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This includes, for example, Burma, China, Mongolia, Japan, Korea, the Philippine Islands, and Samoa.

.30 Black/Negro—A person having origins in any of the original peoples of sub-Sahara Africa.

.40 Caucasian—A person having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian subcontinent.

.50 Hispanic—A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

While use of the terms, definitions, and procedures of this handbook is not a requirement imposed by any governmental agency, these materials do reflect governmental requirements existing at the time of the handbook's completion. (Chapter I, Overview, page 1)

At the time this handbook was printed, agreements about categories and definitions for racial and ethnic groups were under development for all Federal agencies. Until such time as these agreements are completed, state and local agencies and institutions must refer to OCR (or to any other Federal agency requesting racial/ethnic data) for the specific reporting requirements of each data collection instrument. (Footnote, page 30)

A memorandum dated August 1975, Office for Civil Rights, to Chief State School Officers, specified, "For the purposes of these records," the following ethnic designations: American Indian, Black American, Asian American, Spanish Surnamed American, Other.

The Florida State Department of Education has adopted the following ethnic/racial designations for reporting purposes: White, Non-Hispanic, Black, Non-Hispanic, Hispanic, American Indian/Alaska Native, and Asian/Pacific Islander.

Those examples of one specific item or requirement serve to indicate the variety of statistical manipulations of the same basic data that would be required in responding to the various agencies concerned. This school district serves over 240,000 students and employes over 25,000 people and each must be categorized in accordance with these varied requirements.

A copy of an Announcement, dated June 4, 1975, from NCES (National Center for Education Statistics) was received by this school district on October 2, 1975, from the Florida State Department of Education. Although this announcement states that racial/ethnic categories and definitions have been agreed upon by the Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), the General Accounting Office (GAO), and the Office of Management and Budget (OMB), the following statement will still serve to make this agreement open ended:

(The categories listed are the same as those adopted by the Florida State Department of Education: White, Non-Hispanic; Black, Non-Hispanic; Hispanic; American Indian/Alaska Native; Asian/Pacific Islander.)

This set of "five mutually exclusive and exhaustive" categories represents the minimum number of categories to be used. Under some circumstances, OCR may require a school system to maintain and/or report data about subgroups within one or more of the five basic categories. . . . As an illustration, the Hispanic category might be subdivided into subcategories for Mexicans, Puerto Ricans, Cubans, and other Hispanics.

A large school system, such as Dade County, the sixth largest system in the nation, is further confronted with the vexation of attempting to categorize families of mixed ethnicity, i.e., Blacks and Whites, Blacks and Hispanics, Blacks and Orientals, Hispanics and Whites, and religious groups that refuse to identify with any ethnic category. The undue emphasis on ethnicity has attained a point of becoming counter-productive and serves to negate consideration of that unifying commonality we once cherished—American. Each fragmented group uses this identity in attempts to form a power base which serves to reinforce that which we are attempting to overcome—isolation, alienation, and confrontation. Poverty, under achievement, physical handicaps, drug abuse, and other human deficiencies and frailties have no solution in their ethnicity.

The result of this over-emphasis is to reinforce the negative elements in each group that support the belief that only members of their respective groups can respond to their "special problems." Black teachers can best teach Black students, white teachers cannot teach Spanish students, and Spanish teachers cannot teach other than Spanish students.

Specific and detailed record keeping requirements have also been disseminated for bilingual education programs, exceptional child programs, and student discipline.

The specificity of requirements related to student discipline is indicated by the following quote from an OCR memorandum for Chief State School Officers, dated August 1975: "This accounting should contain an entry for each student subject to disciplinary action as described below, the racial/ethnic designation and sex of the student, the school attended, the description of the offense or offenses for which disciplined, the title of the person or persons reporting the offense, the title of the persons imposing the action or actions, and a concise procedural history leading to the disciplinary action or actions from the initial reporting of the offense through final disposition of the case. The accounting should dictate which alternatives to the disciplinary action, if any, were considered prior to the imposition of the disciplinary action."

"A log of any formal or informal hearings."

"A log of referrals or disciplinary cases to courts or to juvenile authorities."

While this school system, as well as others, maintains this type of information, it may not be in the formats specified by these memoranda. School districts must retain the flexibility and authority to respond to their needs as determined by local resources and capabilities. Such should not be a camouflage for discriminatory practices and failure to assure equal opportunities and equal allocation of resources. However, the diversion of resources to burdensome record keeping and bureaucratic intrusion that reflects a "gestapo" orientation does not contribute to the resolution of the problems.

This school district has taken constructive measures in an effort to overcome the inequities of the past in regard to minority citizens. During the 1974–75 school year there were no expulsions of students and only two instances of students suspended in excess of ten (10) days. This has not resulted in any significant change in student behavior and only represents a change in our responses to such behavior.

Unquestionably, there is justification for concern about the disproportionate number of minority children suspended and/or expelled from schools nationwide. However, the focal point of concern should not be limited to a purely statistical assessment but also a consideration of student behaviors that contribute to the need to use these disciplinary actions. This is a two-way problem that dictates action in both directions—changes and constructive actions by school authorities and changes and constructive actions and responses by students concerned.

The myopic viewpoint that the problems of youth, both minority and majority, are the sole result of ineffective school operations is fallacious, and does a disservice to the dedicated citizens, parents, and educators who represent the professionals who operate our schools.

The following example of requirements for the bilingual program for districts determined not to be in compliance with Title VI under *Lau* serves to illustrate the scope of the requirements that would be levied on a district, such as Dade County, which serves a highly diverse linguistic poulation, i.e., Spanish, Haitians, Vietnamese, Mexicans, Indians, Chinese, Japanese, and a miscellaneous assortment of other languages (from Office for Civil Rights Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under Lau v. Nichols, Summer 1975) "In order to make the aforementioned assessments the district must, at a minimum, determine the language most often spoken in the student's home, regardless of the language spoken by the student, the language most often spoken by the student in the home and the language spoken by the student in the social setting (by observation). "These assessments must be made by persons who can speak and understand the necessary language(s). An example of the latter would be to determine by observation, the language used by the student to comunicate with peers between classes or in informal situations. These assessments must cross validate one another. (Example: students speak Spanish at home and Spanish with classmates at lunch.) Observers must estimate the frequency of use of each language spoken by the students in these situations. "In the event that the language determinations conflict. (Example: student speaks Spanish at home, but English with classmates at lunch), an additional method must be employed by the district to make such a determination (of example, the district may wish to employ a test of language dominance as a third criterion.)

We urge our congressional leaders to reverse the trend of Federal bureaucratic intervention in the day-to-day operation of schools. School districts that are responsive and that have demonstrated effective use of resources in responding to their local needs should not be victimized by HEW's "broad brush" policies designed to identify the uncooperative.

Sincerely yours,

BEN SHEPPARD, *Chairman,*
School Board of Dade County.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 29, 1975.

Hon. CARL PERKINS,
Chairman, House Committee on Education and Labor, Rayburn HOB
Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing a copy of letter from a local school official from my District. Mr. Rogers is raising what I feel is a very valid point. After reviewing the HEW regulations, I, too, am quite concerned about what appears to be a significant intrusion on the operation of local schools by the Federal Government. Not only do the requirements impose an undue amount of work in relation to the minimal benefits, but the very existence of these requirements implies that HEW does not trust the good faith of local school oficials.

I trust that Mr. Rogers' letter will be of help to you and your Committee in exercising its jurisdiction over Federal activities in the field of public education.

With best regards, I am

Sincerely,

WALTER B. JONES,
Member of Congress.

Enclosures.

MARTIN COUNTY BOARD OF EDUCATION,
Williamston, N.C., October 16, 1975.

Hon. WALTER B. JONES,
Representative, U.S. House of Representatives, House Office Building,
Washington, D.C.

DEAR MR. JONES: It has come to my attention through a copy of a memo enclosed that local school units will be required to comply with requirements contained in that memo on student discipline.

The voluminous amount of information and records to be kept according to the memo is unrealistic in light of our limited funds and staff.

Our Board of Education and our personnel believe that all students should be treated fairly, and we try very hard to do this. We also believe that students and parents should be afforded due process, and we make provisions for this. But to place an undue burden on local school systems such as that being promulgated by OCR of HEW further cuts into the time devoted to instruction and the total education process.

If a protest to Rep. Carl Perkins, Chairman, House Education and Labor Committee, would help, we would appreciate this being done through your office.

Thank you for your interest and help in this matter.

Sincerely,

R. E. ROGERS, *Superintendent,*
Martin County Schools.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 28, 1975.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, House of Representatives, Washington, D.C

DEAR CHAIRMAN PERKINS: Enclosed is a sample of the recurring complaints I am receiving from members of Boards of Education and school district administrators in the Fourth District.

I hope it will be useful in achieving meaningful solutions to the problems in education rather than administrative exercises in federal harassment.

Sincerely yours,

JAMES P. JOHNSON,
Member of Congress.

Enclosure.

MESSA COUNTY VALLEY SCHOOL DISTRICT NO. 51,
ADMINISTRATIVE SERVICE CENTER,
Grand Junction, Colo., October 13, 1975.

Representative JAMES JOHNSON,
U.S. House of Representatives, House Office Building, Washington, D.C.

DEAR REPRESENTATIVE JOHNSON: During the course of events since February, 1974, HEW—Office for Civil Rights has written a number of regulations and memoranda which have not been approved by Congress nor the President. These regulations and memoranda have the same effect of law as far as HEW-OCR is concerned. Since February, 1974, the following has occurred:

(*a*) An interpretation of the Lau v. Nichols decision (San Francisco) that the criteria by which a pupil was determined to be unable "to read, write, speak and understand the English language" was dependent upon the language spoken by his parents and peers rather than how well the pupil could function in English. (A review of the rules and regulations for Bilingual-Bicultural Education Act is quite revealing.)

(*b*) The interpretation of the Lau v. Nichols decision by OCR reveals its position to be that it is a Constitutional right as well as a right under Title VI of the Civil Rights Act to receive an education in the native language of the parents or in the native language of the pupil's peers regardless of the pupil's proficiency in English.

(*c*) The Office for Civil Rights operates in a "gestapo" like fashion; i.e. the specific complaints and charges will not be given the school districts, the criteria which is allegedly violated are never written nor provided school districts, the school district is always assumed to be guilty unless it can prove otherwise, school district evidence is rarely if ever accepted, the hearing process is always conducted by persons who were appointed to their positions because they are sympathetic to the OCR position, school district federal funds are threatened with discontinuance *or* are discontinued while the investigation or hearings take place (usually a matter of months or years during which programs for children are stopped).

(*d*) Under the guise of HEW-OCR regulation 45 CFR-Part 80-Section 80.6 (b) and Title VI of the Civil Rights Act of 1964, HEW-OCR is requiring reports and the conduct of surveys (for which the district must assume financial responsibility) for the purpose of determining the degree to which the family or peers speak a language other than English, the number of employees and pupils who are minority (even though it's a violation to ask), the number of pupils who are disciplined and the "minority" to which each belongs (even though it's a violation to ask).

These and other actions by HEW-OCR led to action being taken by the Colorado Association of School Executives in its annual meeting by adopting two strongly worded resolutions. These resolutions are attached for your interest. They are self-explanatory.

It should be made very clear that it is *not* our intent that the Civil Rights Act be repealed. We are interested in seeing that the Board of Education (elected by the citizens of this community) is at least extended the same rights as "common criminals." A Board of Education as the legally elected representatives of the people should have the right:

(*a*) To have the specific charges and allegations which are purported to have been violated presented to it in writing;

(*b*) To confront its accuser;
(*c*) To be presumed innocent until proven guilty;
(*d*) To examine and cross-examine witnesses for and against it;
(*e*) To have a hearing by an impartial panel;
(*f*) To have access to any and all evidence which will be used against it;
(*g*) To have counsel present during the interrogation of any employee or pupil;
(*h*) To have proper notice that an investigation is being or will be conducted;
(*i*) To have adequate notice when personnel or records are to be requested for interrogation or for review;
(*j*) To have the right of appeal; and
(*k*) To have counsel.

I am sure that this list is not exhaustive in the area of rights that should be extended to a Board of Education, but the general principle that what is good for one side of the issue must also be provided the other is there. Surely this is not asking too much!

The actions taken by HEW-OCR to mandate a variety of surveys and record keeping processes are an imposition on time and money of school districts. If these mandates are followed to their logical conclusions, then HEW-OCR can dictate the services, research and programs it wishes simply by demanding reports and surveys ad infinitum. Local control of public education is still an issue near and dear to the hearts of local citizens. It should remain so without the interference of HEW-OCR.

The recent memo forwarded by HEW-OCR to collect data on the ethnicity of pupils involved in disciplinary actions presupposes that a school district has preventive control over all pupils and, therefore, the pupils involved in disciplinary problems should fall into the same distribution as the percentages of race or national origin. The premise is ridiculous! Pupil behavior may or may not fall into the pattern by ethnicity. But to assume it will and mandate surveys and reports for all districts henceforth has absolutely no foundation in fact or reason. This requirement or law (since that is what HEW-OCR believes it is) will mandate hours and hours of time and substantial dollars to implement—all at local school district expense.

Specifically, this district and many others would solicit your support in seeking rules, regulations and guidelines which will insure that all parties are treated fairly (see Special Resolution, Colorado Association of School Executives). This district and others are soliciting your support in the development of rules, regulations and procedures by HEW-OCR which are more responsive because of review by Congress and by the President. This district and others are requesting that your convey our feelings (and hopefully yours) to House Education and Labor Committee Chairman Carl Perkins and Representative Albert Quie (ranking Republican member of the committee).

If I may be of further assistance in this matter, I am available at your request.

Sincerely,

DONALD L. OGLESBY, ED. D.,
Superintendent of Schools.

Enclosures: Appendix A, *Special Resolution*, Colorado Association of School Executives, adopted August 15, 1975. Appendix B, *Resolution VII*, Colorado Association of School Executives, adopted August 15, 1975.

APPENDIX A—SPECIAL RESOLUTION, COLORADO ASSOCIATION OF SCHOOL EXECUTIVES, AUGUST 15, 1975

SPECIAL RESOLUTION

Office of Health, Education and Welfare.

Be it resolved that the Association seek through the State's Congressional representatives and State officials clearer procedures for the implementation of the Civil Rights Act of 1964 which will insure:

A. That specific criteria are developed, consistent with law and the intent of Congress, by which school districts may properly assess their compliance or noncompliance with the Act;

B. That school districts will receive specific charges and specific criteria which are all alleged to have been violated in any action in which federal funding for a district's educational programs is threatened or may be threatened with termination;

C. That federal funds received by a district for educational programs will not be terminated until *after* a finding of violation has been reached by an impartial hearing panel and all subsequent appeals have been resolved;

D. That impartial third party hearing panels are appointed to review and to hear allegations of violation of the Civil Rights Act of 1964;

E. That specific rules, regulations and procedures are developed for the conduct of any investigation of an alleged violation of the Civil Rights Act; these rules, regulations, and procedures should be reasonable and equitable to all parties and consistent with the rights of individuals and rights of staff and pupils under the Privacy Act;

F. That all costs incurred by a school district in the conduct of an investigation by the Office for Civil Rights or any other governmental agency shall be recoverable by the school district from the agency conducting the investigation;

G. That the Office for Civil Rights and any other governmental agency must notify a school district immediately upon commencing any investigation, stating the specific charges alleged to have been violated and the specific criteria against which the school district is to be evaluated.

H. That the Office for Civil Rights and any other governmental agency shall not harass, coerce, intimidate or threaten a school district in the conduct of an investigation, the conduct of a hearing, or in the conduct of any official action of the agency.

APPENDIX B—RESOLUTION VII

VII. REGIONAL OFFICE OF HEALTH, EDUCATION AND WELFARE

The Association denounce the practices by the regional office of the U.S. Department of Health, Education and Welfare in (1) threatening Colorado School Districts with withholding of federal funds as a coercive measure in response to complaints, (2) making press releases on matters in process of investigation prior to findings and (3) conducting investigations under an assumption of noncompliance as opposed to objectivity in an investigation.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 20, 1975.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am taking the liberty of forwarding the enclosed letter from the President of the Massachusetts Association of School Superintendents, in case you would consider it appropriate for inclusion in your hearing record on the directive of the Department of Health, Education, and Welfare's Office of Civil Rights dealing with records on school discipline.

With kind regards.

Sincerely,

GERRY E. STUDDS.

Enclosure.

HANOVER PUBLIC SCHOOLS,
Hanover, Mass., October 3, 1975.

Representative GERRY STUDDS,
Rayburn House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE STUDDS: As president of the Massachusetts Association of School Superintendents, I write to you concerning a directive by Department of Health, Education, and Welfare, Office of Civil Rights (DHEW-OCR) dealing with records to be kept on school discipline in every school. This directive is to have a hearing before a House Committee on Labor and Education October 9, 1975.

The thrust of the directive seems to be to locate and correct abuses of discrimination against minorities since there is evidence that such groups of school children receive a disproportionate share of 'punishment' in school. No reasonable person condones such discrimination nor does he argue against the need for reasonable disciplinary procedures in schools to enable good education to be available to all students. However, I, and most school administrators, believe this is a type of bureaucratic overkill requiring every school in the nation to keep a second record requiring extensive clerical, administrative and teacher time which will have to be taken away from working with youngsters since there are no additional funds or personnel to produce the required forms.

I feel I am much more moderate in my thinking than most administrators in this state because we now keep good records, have few discipline problems and no minorities. It is ironic that in this state we have just removed every mention of minority status because of various federal and state regulations but now, in defiance of these directives, we would have to keep prominent the fact the person might be from some minority group. Racial problems do exist in some school districts so it might be better to require this directive in every school or district which has above a certain percent of minority children. Between state requirements on discrimination, on children with special needs, on the current reduction of state aid to education in Massachusetts because of state financial problems and the resultant budget proposals such federal directives become unnecessary harassment for most communities. I doubt if HEW would approve of keeping every student in a class after school to try to find one student who might have caused trouble yet this is what they seem to be doing. At the same time they are saying, we will make you do this, but don't expect us to pay for it. We need time to teach, to learn and to work with youngsters and their families. We can ill afford to drain away resources on clerical projects created by bureaucrats which must be funded at the local level.

I hope you might feel as I do on these matters and might let Representative Carl Perkins know of our concern before the hearing with his Committee October 9.

Sincerely yours,

ROBERT P. FOX, *President,*
Massachusetts Association of School Superintendents.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 17, 1975.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, Rayburn Building, Washington, D.C.

DEAR MR. CHAIRMAN: Mr. James A. Runkel, District Superintendent of Schools of the Board of Cooperative Educational Services in the Wayne-Fingerlakes area of Western New York has written his strenuous objections to a Directive from the Department of Health, Education and Welfare concerning record keeping on student-discipline procedures and actions in school districts. A copy of the letter and the HEW memorandum are enclosed for your information.

Mr. Runkel requested that I inform your Committee of the opposition to this directive in order that the matter may be considered in current deliberations.

Very truly yours,

BARBER B. CONABLE, Jr.

Enclosure.

WAYNE-FINGER LAKES,
FINGER LAKES EDUCATIONAL CENTER,
Stanley, N.Y., October 7, 1975.

Hon. BARBER B. CONABLE, Jr.,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CONABLE: I am writing to you in regard to an HEW August 1975 Memorandum for Chief State School Officers on Record Keeping on Student Discipline Procedures and Actions in School Districts. The AASA Legislative Alert Service has sent me a copy of this as President of the New York State Council of School District Administrators.

A copy of this memorandum is enclosed in case you have not already received it through other means.

I am writing to protest this pending action by HEW.

1. I do not condone any attempt to discriminate against anyone by the use of expulsion or suspension. I do not believe that HEW's own figures demonstrate

that such discrimination has occurred. However, if this does occur, individual complaints should be handled in an individual manner rather than in the manner proposed by HEW, which to me smacks of "big brother".

2. I do believe that suspension and/or expulsion under proper safeguards are legitimate means to be used by school authorities in maintaining a learning environment. We have these proper safeguards already in New York State. I call your attention to Section 3214 of New York State Education Law which states in part: "The Board of Education may adopt bylaws delegating to the principal the power to suspend a pupil for a period not to exceed five school days. No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel with the right to question witnesses against such pupil and to present witnesses and other evidence on his behalf.

Where a pupil has been suspended in accordance with this section, the superintendent shall personally hear or may designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the proceeding before him. A record of the hearing shall be maintained. The hearing officer shall make findings of fact and recommendations as to appropriate measure of discipline to the superintendent. Report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the Board of Education who shall make its decision solely upon the record before it."

3. The solution proposed by HEW is not only unreasonable, but it is totally unrealistic. Schools in our State and throughout the United States have been forced because of budgetary problems to cut staff. The HEW requirements would require the addition of considerable staff which is really a financial impossibility.

Therefore, I urge you to contact the House Sub-Committee on Education and Labor hearing testimony on October 9 concerning this directive and oppose the implementation of the directive.

If you desire further information, I would be most happy to supply it.

Sincerely yours,

JAMES A. RUNKEL,
District Superintendent of Schools.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 30, 1975.

Hon. CARL D. PERKINS, M.C.,
Chairman, Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Recently it has come to my attention that the Civil Rights Commission initiated a regulation through the Department of Health, Education, and Welfare which will cause excessive work for personnel in the school administration.

We don't need additional administrators to take care of the paper work which will result from the provisions of the memorandum if this regulation is implemented.

Enclosed is a copy of the well-detailed letter which I received from Superintendent of Fort Thomas City Schools, Fred D. Williams. I believe he states his case in a most competent manner because he speaks from experience.

I would appreciate your thoughtful consideration of this measure when you have your final hearings on it.

Sincerely yours,

GENE SNYDER.

Enclosure.

FORT THOMAS CITY SCHOOLS,
Fort Thomas, Ky., October 15, 1975.

Hon. GENE SNYDER,
U.S. Senate,
Washington, D.C.

DEAR CONGRESSMAN SNYDER: Within the past few days I have received a memorandum from the Department of Health, Education, and Welfare entitled "Record

Keeping on Student-Discipline Procedures and Actions in School Districts." The contents of the memorandum were shared with the members of the Fort Thomas Board of Education and the administrative staff. I was authorized to write you a letter voicing our displeasure with the general thrust of the unilaterally proposed directive.

Since 1969, there has been a Gallup Poll conducted yearly to determine the attitude of the public toward education. In every year but one the major problem that was identified by the respondents who participated in the Poll was lack of discipline in the public schools. During this same period of time the U.S. Supreme Court has been rendering decisions that have extended certain rights to students. And now, the Department of Health, Education, and Welfare has concocted a regulation that will make it much easier for local school principals to refrain from taking disciplinary action even when its justifiable because of the attendant paper work required to comply with the regulation.

After reading the contents of the memorandum I have concluded that some of the bureaucrats in the Department of Health, Education, and Welfare are convinced that local school leaders abuse the use of suspension or expulsion of students. There might be some instances where this is true. However, I believe that, for the most part, local school leaders want to take every action at their disposal short of suspension or expulsion to handle disciplinary problems. There are instances however, where stern measures must be taken if proper control is to be maintained in the schools.

In the Fort Thomas School District the number of administrators is kept at a minimal level. The added paper work that will be necessary to comply with the provisions of the memorandum referred to earlier will require additional time on the part of already overworked personnel or the employment of other administrators. Neither is justifiable.

Anything that you can do to bring about a change in the totally unrealistic directive that has been unilaterally proposed by the Department of Health, Education, and Welfare will be appreciated. Thanks in advance for your attention to this matter.

Sincerely,

FRED D. WILLIAMS,
Superintendent.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 14, 1975.

Hon. CARL PERKINS,
Chairman, Committee on Education and Labor RHOB

DEAR MR. CHAIRMAN: I am enclosing for your information a copy of a letter from the President of the Mississippi Association of School Superintendents regarding the recently issued regulations of the Office of Civil Rights.

I believe that you will find this letter to be interesting, and I ask that consideration be given to the views expressed as your committee conducts hearings or acts in its oversight capacity.

Thank you for your consideration of this matter.

Sincerely,

GILLESPIE V. MONTGOMERY,
Member of Congress.

Enclosure.

MISSISSIPPI ASSOCIATION OF SCHOOL SUPERINTENDENTS,
Vicksburg, Miss., October 8, 1975.

Hon. G. V. "SONNY" MONTGOMERY,
U.S. Congressman, House of Representatives
Washington, D.C.

DEAR CONGRESSMAN MONTGOMERY: The Mississippi Association of School Superintendents, by action of the Executive Committee, respectfully request your serious and urgent consideration of the recent Office of Civil Rights (OCR) memorandum for Chief State School Officers regarding record keeping on student-discipline procedures and actions in school districts under date of August, 1975.

DHEW-OCR proposed regulations may be found in the memorandum for Chief State School Officers referred to above from Martin H. Gerry, Acting Director, Office for Civil Rights.

It is the considered professional opinion and position of the chief district school officers of this state that the proposed regulations are unwarranted, excessive, and detrimental to the operation of the public schools of this state; in particular, the Mississippi Association of School Superintendents on behalf of all district superintendents urges you to consider the following five position statements:

1. The Mississippi Association of School Superintendents does not condone discrimination either direct or inverse.
2. Proper rules and regulations and their enforcement is necessary to maintain any system including our public school system.
3. Teachers, administrators and boards are subject to the intimidation and threats under the proposed regulations.
4. Additional costs for staff members, clerical assistants, and the related record keeping necessary to comply to the proposed regulations is prohibitive.
5. The proposed regulations appear as a threat to continued public education.

We respectfully ask that you make known the opposition of the Mississippi Association of School Superintendents to the proposed regulations at hearings before a sub-committee of the House of Education and Labor Committee and that you use your influence to defeat this proposal.

We express our gratitude and our continued support for your endeavors on behalf of public education in our state and country.

Respectfully,

PAUL D. ARMSTRONG, *President.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 25, 1975.

Hon. CARL PERKINS,
Chairman, House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed for your kind attention is correspondence from Mr. Truitt Ingram, Superintendent of the Marshall Public Schools regarding reporting requirements imposed by the Department of Health, Education, and Welfare, Office of Civil Rights.

It seems to me that the reporting requirements imposed by the August, 1975 HEW memorandum are grossly excessive and I will appreciate any consideration you can properly give this matter.

With kindest regards and best wishes, I am

Sincerely,

WRIGHT PATMAN.

Enclosure.

MARSHALL PUBLIC SCHOOLS,
Marshall, Tex., October 20, 1975.

Mr. WRIGHT PATMAN,
The House of Representatives,
Washington, D.C.

DEAR MR. PATMAN: Recently, I received correspondence from the Department of Health, Education, and Welfare, Office for Civil Rights, outlining requirements and procedures that school districts must follow in keeping a record of student discipline procedures. It became evident to me after reading this correspondence that these requirements would be a tremendous burden upon a school district and would give the Department of Health, Education, and Welfare, Office for Civil Rights of the Federal government a stronger hand in dictating operation of school districts.

I do not believe that you or the Congress of the United States intended such powers as are indicated in this correspondence to be placed in the hands of a federal agency. Some steps must be available to you to curb this type of action.

Would you please relay my feelings, and hopefully yours, to: Representative Carl Perkins, Chairman, House Education and Labor Committee and to Representative Albert Quie, ranking Republican member of the committee.

Local school districts throughout the United States have had restrictions, rules and regulations imposed upon them that are definitely hampering the accomplishment of their main goal: the education of children. This seems to have been lost in our national policy as it is being implemented by the Department of Health, Education, and Welfare and the Office for Civil Rights.

Thank you for any assistance you can give in this matter.

Sincerely yours,

TRUITT INGRAM, *Superintendent.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 28, 1975.

Representative CARL PERKINS,
Chairman, House Committee on Education and Labor, Rayburn House Office Building, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Please find enclosed a letter from Mr. John Tobin, Superintendent of the Westwood Public Schools in Westwood, MA.

His concern has been generated by a memorandum issued by the Department of Health, Education and Welfare Office of Civil Rights which requires that each school system prepare extensive records on student discipline to justify the disciplinary action and to prove non-discrimination.

I strongly urge legislative inquiry into what seems to be a time consuming task and urge you to consider Mr. Tobin's views on this issue.

Thanking you for your assistance, I remain,

Sincerely,

JOHN JOSEPH MOAKLEY,
Member of Congress.

Enclosure.

WESTWOOD PUBLIC SCHOOLS,
Westwood, Mass., October 14, 1975.

Congressman JOHN J. MOAKLEY,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MOAKLEY: Recently the DHEW Office of Civil Rights (OCR) issued a memorandum dealing with student discipline and the procedures, documents, and record keeping that each school system must keep in order to justify the disciplinary action and prove non-discrimination in each case.

I would like to express my deep concern on this matter and ask that this bureaucratic nightmare be eliminated or corrected.

The guidelines for procedures and record keeping could turn teachers, principals and superintendents into bookkeepers rather than educators.

It is my opinion that there must be better ways to ensure equal opportunity in those schools where discrimination exists than assume we are all guilty and thereupon impose these unrealistic controls and paper work.

I hope you will support my position and relay these feelings to the House Labor Committee Chairman Carl Perkins and Representative Albert Quie.

Yours very truly,

JOHN F. TOBIN,
Superintendent of Schools.

UNITED STATES SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., October 24, 1975.

Hon. CARL D. PERKINS,
Chairman, Elementary, Secondary, and Vocational Education Subcommittee, House Education and Labor Committee, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed is a copy of a letter I recently received from Mr. J. C. Walton, Superintendent of Schools, School District of Kershaw County, Camden, South Carolina, concerning the recent announced position of the Office for Civil Rights regarding record keeping on student-discipline procedures and actions.

I understand your Subcommittee shortly will be holding hearings on this matter. I would appreciate the Subcommittee giving the views expressed by Mr. Walton very careful and serious consideration.

With kindest regards and best wishes,

Very truly,

STROM THURMOND.

Enclosure.

SCHOOL DISTRICT OF KERSHAW COUNTY,
Camden, S.C., October 10, 1975.

Senator J. STROM THURMOND,
Senate Office Building,
Washington, D.C.

DEAR SENATOR THURMOND: Attached is a copy of the memorandum dated August, 1975, from the DHEW Office of Civil Rights to Chief State School Officers concerning record keeping on student-discipline procedures and actions in school districts.

The memorandum cites Title VI of the Civil Rights Act of 1964, Departmental Regulation (45 CPR, Part 80, Section 80.6(b)), and Title IX of the Education Amendments of 1972, Section 901(a) as authority for the requirement that detailed, minute, specific, and comprehensive records be furnished concerning student disciplinary procedures and actions in school districts.

Every effort has been made, is being made, and will be made to assure just and equitable treatment for every student in Kershaw County whether that student is black or white, male or female. We will tolerate no departure from the standard of fundamental fairness in any contact with our young people.

However, the requirements of the attached memorandum are so excessive and burdensome that the object of fair, equitable, and impartial discipline may be adversely affected rather than expedited.

The burden of record keeping imposed by the memorandum would appear to be vastly disproportionate to the problems addressed, creating problems rather than eliminating them. School administrations are already overloaded with resource-consuming requirements which have little to do with the educational process. The expenditure of personnel, time, and energy involved in meeting the requirements of the memorandum are unnecessary and far in excess of any changed patterns of discipline which might result.

In summary, the measures taken here would appear to be an instance of bureaucratic over-kill to deal with a problem which could be far more efficiently and effectively handled in other ways.

It is our understanding that a subcommittee of the House Education and Labor Committee has scheduled testimony concerning the directive.

We feel that this is a matter about which you would join us in concern.

Yours truly,

J. C. WALTON,
Superintendent of Schools.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 23, 1975.

Hon. CARL D. PERKINS,
Chairman, House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The attached letter from the East Hartford Public Schools raises a question about needless and costly paperwork necessitated by an Office of Civil Rights memorandum on student discipline.

I urge you to look at the reasonableness of these demands.

Sincerely,

WILLIAM R. COTTER,
Member of Congress.

Enclosure.

PUBLIC SCHOOLS OF EAST HARTFORD,
Hartford, Conn., October 10, 1975.

Hon. WILLIAM R. COTTER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN COTTER: The Office of Civil Rights has recently reviewed and analyzed data on the student disciplinary actions within school systems throughout the nation. The memo mandates that schools keep detailed discipline records in order to show if there is discipline against minority pupils within the school district. The East Hartford Public Schools' system and other school systems throughout Connecticut believe that this proposal by the Office of Civil Rights is totally unrealistic when compared with the staff capabilities of schools to comply with such edicts in line of reduced budgetary and program considerations. School systems would be forced to spend so much time record-keeping that there would be no time for discipline.

Please relay our feelings to Chairman Carl Perkins and Representative Albert Quie of the House Education and Labor Committee.

If I can be of further help in this matter, please contact my office.

Sincerely,

SAM J. LEONE,
Assistant Superintendent.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., November 10, 1975.

Hon. CARL PERKINS,
Chairman House Commitee on Education and Labor, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In August of this year, the Office for Civil Rights at HEW published guidelines requiring school systems to maintain detailed records of student disciplinary actions and procedures.

The President of the Nevada Association of School Administrators has informed me that this new regulation will impose a tremendous bookkeeping burden on local school officials, and in effect may actually deprive these officials of their recourse to disciplinary action.

I am writing to ask that your Committee use its influence to have this directive rescinded. These cumbersome regulations should not be permitted to complicate the already complex matter of school discipline.

With best regards,

Sincerely,

JAMES D. SANTINI,
Member of Congress.

Enclosure.

NEVADA ASSOCIATION OF SCHOOL ADMINISTRATORS,
October 24, 1975.

Mr. JAMES SANTINI,
U.S. Congress, Washington, D.C.

DEAR MR. SANTINI: The attached memorandum recently sent to Chief State School Officers was sent to me as President of the Nevada Association of School Administrators by the American Association of School Administrators. After reading it you will see why it was tagged with a red alert.

Already liberals in all segments of society have tied our hands to such a degree as to make disciplining students an extremely difficult and time consuming process. This monstrosity will effectively kill all discipline procedures still left to us.

Certainly we do not condone any attempt by anyone to discriminate against students with any type of punishment, but this directive is totally unrealistic in its scope and requirements. To assume that minorities are being discriminated against because more of them are disciplined than whites is a totally false assumption. The fact of life is that more of them need disciplining than whites, especially in the initial months of integrating schools. We find, for example that blacks that were disciplined many times the first year of integration, require far less in the second year and beyond. In fact, by the third year the percentage of blacks disciplined usually does not exceed the percentage of whites. We deal with what the homes send us and unless we can discipline and require these students to conform to school and classroom rules and regulations, teaching is a farce. (The interesting thing is that generally the blacks support our discipline procedures more than the whites do.)

Teaching, at best, is a most difficult task, without discipline, it's impossible. If one group of society needs more disciplining than another, why is the school made to suffer because of it? Why tie our hands?

I'm afraid this is one more indication that the bureaucrats in Washington are completely out of touch with reality.

Please, will you help us get this directive rescinded. I know you're extremely busy but if you could relay our (and hopefully your) concerns to House Education & Labor Committee Chairman Carl Perkins and Committeeman Albert Quie, it would be greatly appreciated.

Thank you for your time and help.

Sincerely,

Marvin L. Waite, *President.*

Congress of the United States,
House of Representatives,
Washington, D.C., October 9, 1975.

Hon. Carl Perkins,
Chairman, Committee on Education and Labor, House of Representatives, Washington, D.C.

Dear Mr. Chairman: The attached letter is from Dr. Rodney D Cathey who operates one of the largest school districts in my district.

The school districts are already burdened with taking care of an increased alien student load without a suffiicent tax base to provide educational school construction to take care of the enormously increasing number of legal resident alien children coming into the school system.

If you permit them to be burdened with some more work that requires additional personnel where does that take us?

Naturally people's civil rights have to be observed and this is one school district that does a splendid job, but the time has come that we point out to HEW that there are limitations on their law-making capabilities.

I am sending the same type letter to Rep Albert Quie—and please accept my thanks for whatever consideration you give this matter.

Sincerely,

E (Kika) de la Garza,
Member of Congress.

McAllen Independent School District,
McAllen, Tex., October 6, 1975.

Hon. E (Kika) de la Garza,
Congress of the United States,
House of Representatives, Washington, D.C.

My Dear Kika: I am most perturbed about a memorandum issued by DHEW Office of Civil Rights dated August 1975. A copy is attached. What really bothers me is that it is difficult to accept that there is deliberate discrimination by school officials when administering discipline. The requirements specified means that school personnel will be required to let the school "go to pot" while trying to meet the demands of HEW-OCR reporting. Schools just do not have the kind of staff capabilities to comply with such asinine requirements.

Please relay my feelings, and hopefully yours, to House Education and Labor Committee Chairman Carl Perkins and Representative Albert Quie.

Sincerely yours,

Rodney D. Cathey, *Superintendent.*

Cameron County,
Brownsville, Tex., October 8, 1975.

Hon. E (Kika) de la Garza,
Congress of the United States,
House of Representatives, Washington, D.C.

Dear Kika: My colleagues throughout the Rio Grande Valley School Systems and myself are very perturbed and upset about the memorandum issued and circulated by DHEW Office of Civil Rights dated August 1975. I am sure you have seen a copy. The thing that really bothers school administrators is the requirements of HEW means our overworked school personnel will be required to work overtime and allow valuable instructional time and teaching situation go unattended while trying to meet the demands of HEW-OCR reporting. It is the feeling of teaching personnel, principals and school Administrators that we do not have the capabilities to comply with such unreasonable requirements.

I feel sure you will agree with us that the ultra left in making allegations through various supported foundation financed organizations and their representatives that tends to break down our democratic way of life and a school system that has developed through trials and adversity.

Will you please relay how I feel along with my colleagues, to House Education and Labor Committee Chairman Carl Perkins and Representative Albert Quie.

Sincerely,

RAYMOND G. HOWARD,
Cameron County School Superintendent.

BROWNSVILLE INDEPENDENT SCHOOL DISTRICT,
Brownsville, Tex., October 7, 1975.

Hon. E. (KIKA) DE LA GARZA,
Congress of the United States, House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DE LA GARZA: We have recently received a memorandum issued by DHEW office of Civil Rights pertaining to student discipline.

The absurdity of school authorities deliberately discriminating toward minority students in matters of disciplinary action is self-evident and an insult to the integrity of the profession.

This seems to be just another encroachment on the responsibilities of Boards of Education and local control.

I hope you have some of the same feeling and will so indicate to the House Education and Labor Committee.

Yours for service,

JAMES T. OGG,
Superintendent.

LASARA INDEPENDENT SCHOOL DISTRICT,
Lasara, Tex., October 9, 1975.

Hon. E. (KIKA) DE LA GARZA,
Congress of the United States, House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DE LA GARZA: I am very disturbed with regard to a memorandum issued by DHEW Office of Civil Rights dated August, 1975. The problem is that it is difficult to accept that we as school officials deliberately discriminate when administering punishment. Schools do not have the staff capabilities to comply with such requirements.

Please relay our feelings (and we hope yours) to the House Education and Labor Committee chairman, Carl Perkins, and to Representative Albert Quie.

Your kind consideration and response will be greatly appreciated.

Sincerely,

E. H. LORFING,
Superintendent.

Enclosure.

AASA LEGISLATIVE ALERT,
October 1, 1975.

Re Recent Office of Civil Rights (OCR) Memorandum for Chief State School Officers.

Federal Relations Alert 75-2
To: All Members, AASA-SASA Federal Relations Network Team.
From: Jim Kirkpatrick, Senior Associate Director.

Many of you have already received—others will soon get—a memorandum dealing with DHEW Office of Civil Rights (OCR) stipulations of the kinds of documents pertaining to student discipline that must be retained by all school systems receiving federal funds.

DHEW-OCR justification for this drastic action is based on a federal survey covering disciplinary actions in the 1972–73 school year purporting to show that minority students accounting for 38 percent of the total enrollment also accounted for 43 percent of the expulsions and 49 percent of the suspensions.

DHEW-OCR cites Title VI of the Civil Rights Act of 1964 and the Departmental Regulation (45 CFR Part 80 Section 80.6(b)) as the basis for their authority in instituting the record keeping requirements on student-discipline procedures and actions in school districts.

AASA is enclosing in this mailing a copy of the memo sent to all chief state school officers enumerating the requirements.

On Tuesday, October 9, AASA will appear before a subcommittee of the House of Education and Labor Committee to testify concerning this directive. The essence of the AASA position is: (1) AASA does not condone ANY attempt to discriminate against anyone through the use of expulsion or suspension; (2) AASA believes that such actions are bona fide means to be used by school authorities in maintaining a learning environment; and (3) AASA believes that the remedy unilaterally proposed by DHEW-OCR is totally unrealistic when compared with the staff capabilities of schools to comply with such edicts in light of reduced budgetary and program considerations.

What can you do?

You can, if after reviewing the OCR Memo and coming to the same general conclusion as AASA—write to your federal congressmen expressing your deep concerns on this matter (be specific) and ask them to relay your (and hopefully their similar) feelings to House Education and Labor Committee Chairman Carl Perkins and Rep. Albert Quie (ranking Republican member of the committee). In addition, we urge you to send personal letters of concern to Representatives Perkins and Quie. Letters alerting your Senators to the problem would also be of value.

If you take any action, please keep AASA informed! (Our AASA address is right on this sheet.)

Here are the addresses of the two legislators mentioned above: Rep. Carl Perkins, Chairman, House Education and Labor Committee, 2181 Rayburn House Office Bldg., Washington, D.C. 20515; Rep. Albert Quie, 2181–B Rayburn House Office Bldg., Washington, D.C. 20515.

LA FERIA INDEPENDENT SCHOOL DISTRICT,
La Feria, Tex., October 9, 1975.

The Hon. E (KIKA) DE LA GARZA,
Congress of the United States,
House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE DE LA GARZA: The memorandum issued by DHEW Office of Civil Rights dated August 1975 is something that concerns all thinking school officials. The requirement will mean that school personnel would be required to let the school run itself while trying to meet the demands of the HEW-OCR report. You must realize that most schools, particularly ones the size of the La Feria Independent School District, would not have the staff to comply with such "asinine" requirements.

The public school is at a definite disadvantage during these trying times and memorandums such as the one mentioned in the above paragraph would further "handcuff" school districts.

Thank you for taking the time to read this letter and I sincerely hope that issues such as these will not be forced upon people in public schools.

Sincerely yours,

WILLIAM B. GREEN, III,
Superintendent.

RIO HONDO INDEPENDENT SCHOOL DISTRICT,
Rio Hondo, Tex., October 9, 1975.

Hon. KIKA DE LA GARZA,
House of Representatives,
Washington, D.C.

DEAR SIR: Regarding ethnic discrimination in school discipline, I have not seen any in my 26 years as a school principal.

This is going to be just another damn form to fill out and we have more to do with our time, believe me.

Sincerely,

I. R. Reiff,
Elementary Principal, and Municipal Judge.

Donna Independent School District,
Donna, Tex., October 7, 1975.

Hon. E (Kika) de la Garza,
Congress of the United States,
House of Representatives, Washington, D.C.

Dear Kika: I am very concerned about a particular item sent out by DHEW Office of Civil Rights dated August 1975. There is the insinuation or innuendo that school officials would deliberately discriminate in administering discipline. I am concerned that many school personnel will relax their duties while attempting to supply data for HEW-OCR discipline reports. I know that our school personnel have their hands full and little time to spend in such reporting. I feel this is further regulations to hamper the process of education and learning.

I feel very strongly about this matter and I would hope that you can see the position of school personnel in this matter. Please indicate my feelings to House Education and Labor Committee Chairman Carl Perkins and Representative Albert Quie.

Sincerely,

Donald W. Crockett,
Superintendent.

Mission,
Consolidated Independent School District,
Mission, Tex., October 10, 1975.

Hon. Kika de la Garza,
Congress of the United States, House of Representatives, Washington, D.C.

Dear Kika: As the days go by there are more and more obstacles placed in the road of educational improvement. Just yesterday I returned from a meeting designed to explain Title IX. The people in charge did their best, but it is hard to explain something that does not make sense. As you know, Title IX deals with the prohibiting of sex discrimination in education. I firmly believe in the concept of equality but this has gone too far. Title IX is especially hard to administer when it comes to athletics.

There is a hue and cry that tests and various other measurements show that education is in a state of deterioration. Could it be that we are being asked to do too many things for society other than educate? Note the attached yellow report marked in red. Where do we get the staff to do this detailed reporting?

Attachment #2 concerns bus routes and reporting the ethnic make up of each bus. Can you imagine the work that goes into something like this?

Note that report #3 tears off into another area of fact gathering.

The report #4 is an HEW thing that requires no small amount of research for each campus.

Each report separately is not an impossible task. When these reports are combined with hundreds of other reports it is an all-consuming duty. We have simply got to call a halt to some of this or public schools as we know them will cease to exist. The schools are being made the whipping boy for every social ill or proposed improvement in society (real or imagined) that folks dream up.

It has been a long time since we could work on curriculum, student needs, parent concerns and a thousand other important school functions.

Please look at the reports. Do you and your colleagues know what is being asked of the public school?

Thank you.

Sincerely,

Kenneth White,
Superintendent.

Enclosure.

September 24, 1975.

To: Building Principals.
From: Superintendent of Schools.
Subject: Discipline Records.

The September issue of Report has some pertinent information regarding discipline cases. Until accurate guidelines are received from the state agency and/or HEW you may devise your own system.

Copied from the Report:

OCR tells schools to keep records on discipline. As part of a program to check how well schools are complying with civil rights statutes in their disciplinary procedures, HEW's Office of Civil Rights last month told chief state school officers what kind of records schools should keep when they discipline children. Although it notes that most school systems are already putting the necessary documents in their files, OCR says "it would be of benefit to all school administrators to learn of the nature of the information this Office expects school systems to maintain."

In addition to retaining all records of student disciplinary actions for at least two years, OCR says it expects all schools that get Federal assistance to have the following information in their files, beginning with this school year.

State statutes pertaining to student discipline, including regulations or by-laws issued by the State Board of Education.

Written statements issued by the Board of Education, the Superintendent of Schools, school principals, teachers, or other agents of the Board regarding school policies, standards, practices, and procedures for the discipline of students including, but not limited to, by-laws, handbooks, notices, memoranda or logs. The criteria and procedures used to develop these written statements should be explained, as well as the means by which they were communicated or disseminated to school staff, parents, and/or students.

An accounting of the numbers of students subject to disciplinary actions as described below starting with the school year 1975–76. This accounting should contain an entry for each student subject to disciplinary action as described below, the racial/ethnic designation and sex of the student, the school attended, a description of the offense or offenses for which disciplined, the title of the person or persons reporting the offense, the title of the person or persons imposing the action or actions, and a concise procedural history leading to the disciplinary action or actions from the initial reporting of the offense through final disposition of the case. The accounting should indicate which alternatives to the disciplinary action, in any, were considered prior to the imposition of the disciplinary action.

A log or logs of any formal or informal hearing to disciplinary actions by the Board of Education, the superintendent of schools, school principals or other designees of the superintendent. Entries should include, but not limited to, the racial/ethnic designation and sex of the student, the school attended, the nature of the offense or offenses, the form of notice given to the student, the hearing authorities whether or not the hearing preceded removal from school, explanation of necessity for removal from school prior to hearing and the time elapsed, a description of the testimony offered, the findings, and the disposition of the case.

The kinds of disciplinary actions for which entries should be kept would include, but not be limited to, (1) expulsion, (2) suspension reported by number of school days, (3) corporal punishment, (4) referral to special classes or schools for behavioral modification, and (5) transfer to another class or school.

An accounting of student withdrawals from school (dropouts), containing an entry for each student who withdraws, the school attended, the ethnic designation and sex of the student, and the reason for withdrawal.

A log of referrals of discipline cases to courts or to juvenile authorities. Entries should include a description of the offense or offenses, the ethnic designation and sex of the student, the school attended, and the disposition of the case.

Ethnic Designation. For the purposes of these records, ethnic designation should include American Indian, Black American, Asian American, Spanish Surnamed American, and Other.

KENNETH WHITE,
Superintendent.

TEXAS EDUCATION AGENCY, TRANSPORTATION SECTION, REPORT OF PUPILS TRANSPORTED, BY ETHNIC GROUPS, 1975-76 SCHOOL YEAR

INSTRUCTIONS

Please complete two copies of this report. Mail the original to the Transportation Section, Texas Education Agency, Austin, Texas, 78701, and retain one copy for your files.

This report must be filed with the Texas Education Agency on or before October 15, 1975. If an application is made for an additional bus route, this form must be completed and made a part of the application.

By use of the table below, summarize all eligible students transported on proposed regular bus routes for the 1975-76 school year by ethnic groups. Do not include bus routes transporting only special education pupils.

If a bus makes two or more trips, list each trip separately. The information furnished should be based on the program as operated for the morning runs as to trips made and pupils transported. All eligible pupils transported must be included in this report.

Example.—Bus on route No. 1, trip 1, transports 68 pupils. Bus on route No. 1, trip 2, transports 61 pupils. List each trip of route No. 1 on a separate line.

Route No.—
Trip No.—
American Indian.—
Negro.—
Oriental.—
Spanish Surnamed American.—

This report is true and correct to the best of my knowledge.

-- ------------------
Signature of District or County Superintendent Date

TEXAS EDUCATION AGENCY,
Austin, Tex.

To the Superintendent addressed:

All school districts with one or more campuses containing enrollments of 66 percent minority students are subject to review during each school year. The purpose of the visit is to comply with Section F, Student Assignment, Civil Action 5281, United States District Court, Eastern District of Texas, Tyler Division.

A representative from the Agency's Office of Technical Assistance will contact you in the near future to schedule a visit, at your convenience, to your school district. A specific date and time for this review proposed during the period of September through November, 1975, will be established with you.

A form is enclosed to guide you in the provision of data necessitated by the Court Order. Please complete each of the items prior to the scheduled visit and hold the form for the Agency representative.

Do not hesitate to call our office at (512) 475-5959 if questions arise concerning the proposed visit or the data sheet which is attached.

Sincerely,

GILBERT CONOLEY, *Program Director,*
Office of Technical Assistance.

Enclosure.

District Name ____________________ County-District-Campus No. ____________________

TEXAS EDUCATION AGENCY
Office of Technical Assistance

DATA SHEET FOR CIVIL ACTION 5281 66% REVIEW

Please complete the following form. A representative from the Texas Education Agency's Office of Technical Assistance will pick up the completed information on the date of the scheduled review of your district.

I certify that this information is correct and is secured from the official records of this school (or district)

____
Superintendent

****

Date of review ____________________

****

Complete and hold for visit of Texas Education Agency's Technical Assistance Team.

****

I. Non-identifiable schools (having less than 66% minority student enrollment):

Name of School & Grade(s):	Black	Hispanic	Asian	Amer. Indian	White	Total	Percent Minority
____	____	____	____	____	____	____	
	____%	____%	____%	____%	____%		____%
____	____	____	____	____	____	____	
	____%	____%	____%	____%	____%		____%
____	____	____	____	____	____	____	
	____%	____%	____%	____%	____%		____%
____	____	____	____	____	____	____	
	____%	____%	____%	____%	____%		____%
____	____	____	____	____	____	____	
	____%	____%	____%	____%	____%		____%
____	____	____	____	____	____	____	
	____%	____%	____%	____%	____%		____%
____	____	____	____	____	____	____	
	____%	____%	____%	____%	____%		____%
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	____%	____%	____%	____%	____%		____%
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	____%	____%	____%	____%	____%		____%
____	____	____	____	____	____	____	
	____%	____%	____%	____%	____%		____%
____	____	____	____	____	____	____	
	____%	____%	____%	____%	____%		____%
____	____	____	____	____	____	____	
	____%	____%	____%	____%	____%		____%

2. Identifiable schools (having more than 66% minority student enrollment):

Name of School & Grade(s):	Black	Hispanic	Asian	Amer. Indian	White	Total	Percent Minority
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
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	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%
________	____	______	____	_____	____	____	
	____%	______%	____%	____%	____%		______%

3. Please attach a sheet explaining how students are assigned to individual campuses at the (a) elementary, (b) middle school/junior high, and (c) senior high levels.

4. Does the district allow intra-district transfers? Yes ___ No___. If yes, please explain district policy on intra-district transfers. If more space is needed, please attach sheets.

5. If the ethnic enrollment in any classroom varies more than 30 percent of the total ethnic enrollment of a particular school, list the school, subject, and/or grade where this occurs. If more space is needed, please attach sheets.

SCHOOL	SUBJECT	GRADE

6. Does the district employ any type of assignment of students which results in grouping (ability grouping, etc.)? Yes ___ No ___. If yes, please explain procedures used in assigning such students to individual classrooms or other school activities. If more space is needed, please attach sheets.

7. Enrollment in Title I (Regular)

Total No. of Title I (Regular) Elementary Campuses:	Number of Teachers		Number of Aides		Number of Elementary Students Enrolled:
	Minority	Majority	Minority	Majority	
________	____	____	____	____	________
Total No. of Title I (Regular) Middle School Campuses:	Number of Teachers		Number of Aides		Number of Middle School Students Enrolled:
	Minority	Majority	Minority	Majority	
________	____	____	____	____	________
Total No. of Title I (Regular) Senior High School Campuses:	Number of Teachers		Number of Aides		Number of Senior High School Students Enrolled:
	Minority	Majority	Minority	Majority	
________	____	____	____	____	________

8. Enrollment in Title I (Migrant)

Total No. of Title I (Migrant) Elementary Campuses:	Number of Teachers		Number of Aides		Number of Elementary Students Enrolled:
	Minority	Majority	Minority	Majority	
________	____	____	____	____	________
Total No. of Title I (Migrant) Middle School Campuses:	Number of Teachers		Number of Aides		Number of Middle School Students Enrolled:
	Minority	Majority	Minority	Majority	
________	____	____	____	____	________
Total No. of Title I (Migrant) Senior High School Campuses:	Number of Teachers		Number of Aides		Number of Senior High School Students Enrolled:
	Minority	Majority	Minority	Majority	
________	____	____	____	____	________

9. Bilingual Education

Funding Source:	Grade Levels:	No. of Teachers		No. of Aides		No. of Students Enrolled in Program					No. of Campuses
		Monolingual	Bilingual	Monolingual	Bilingual	Black	Hispanic	Asian	Am. Ind.	All Other	
State-Mandated (S.B. 121)											
Title VII ESEA											
Emergency School Aid Act (ESAA)											
Local Program -or- Other (please specify)											
TOTALS											

10. Total Special Education enrollment (no. and percentage):

Classification:	Black		Hispanic		Asian		American Indian		White		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	
Students											
LLD											
EMR											
TMR											
MBI											
Others (Please list)											
Staff											
Administrators											
Teachers											
Aides											

11. Instruments frequently used to diagnose and assign students to special education:

____________________ ____________________

____________________ ____________________

____________________ ____________________

____________________ ____________________

12. If the percentage of minority students enrolled in special education is more than 10 percent in excess of the percentage of minority students in the district, please attach a description of the procedures used to identify and assign students to special education.

13. Please attach a sheet listing the names of the district's vocational course offerings (vocational agriculture, cosmetology, etc.).

14. Regional Service Center (Check [✓] services utilized by the district):

___a. Media services

___b. Data processing

___c. Curriculum and staff development (inservice)

___d. Special education

___e. Head Start and administrative services

___f. Adult basic education and Title I

___g. Others (Describe)____________________

____

____

TEXAS EDUCATION AGENCY

FALL 1975
FALL SURVEY PACKAGE
CAMPUS FORM NO. 1

1975 INDIVIDUAL SCHOOL CAMPUS REPORT
Due October 15, 1975

____
County District Campus Number

I. Name of School System ______________________

II. Name of School Campus ______________________

III. PUPILS IN MEMBERSHIP
Report, for each category, the number of pupils currently in membership at this school campus.

	Col. 1 American Indian or Alaskan Native	Col. 2 Asian or Pacific Islander	Col. 3 Black, not of Hispanic Origin	Col. 4 Hispanic	Col. 5 White, not of Hispanic Origin	Col. 6 Totals
Pre-K						
K						
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
Ungraded						
Spec. Ed.						
A. Totals						

Signature of Person Furnishing Information   Title   (Area Code) Telephone Number   Date Signed

FALL 1975

______________________ District Name

TEXAS EDUCATION AGENCY
Research Office, MIC

______________________ County District No. (1-6)

SURVEY OF BILINGUAL EDUCATION NEEDS
(Fall Survey District Supplement No. 1)

SECTION I

Enter the number of children of limited English-speaking ability (LESA) enrolled in each grade level (PRE K to 12, SPECIAL EDUCATION). Children of limited English-speaking ability means children whose native tongue is a language other than English and who have difficulty performing ordinary class work in English, Section 21.452, Texas Education Code. Enter the total number of children of LESA whose primary language is as indicated. NOTE: Administrative Procedure 3581 (c-a) specifies that each school district must have on file a Policy Statement adopted by its Board of Education delineating the district's method and criteria to be used for identifying and placing children of limited English-speaking ability in a State Bilingual Program. Attach a copy of this complete policy to this survey.

LINE	LANGUAGE	GRADES														SPEC. ED.
		PRE K	K	1	2	3	4	5	6	7	8	9	10	11	12	
11	SPANISH															
12	GERMAN															
13	KOREAN															
14	CHINESE															
15	FRENCH															
16	VIETNAMESE															
17	ALL OTHER FOREIGN LANGUAGES															
(7-8)	9-27	28-31	32-35	36-39	40-43	44-47	48-51	52-55	56-59	60-62	63-65	66-68	69-71	72-74	75-77	78-80

NOTE: Return one completed copy of this Survey by October 15, 1975 to:
(with Fall Survey Package)

Mr. William Jay, Chief Consultant
Data Collection
Management Information Center
Texas Education Agency
Austin, Texas 78701
Phone (512) 475-6234

RES-020R75

SECTION II

Enter the number of teachers at each grade level (K-6, special education) who are bilingual in English and another language during the 1975-76 school year.

On line 21, enter the number of teachers who are bilingual English and Spanish. Enter the number of teachers who are bilingual English and another language (other than Spanish) by specifying the language(s) on lines 22 through 29.

LINE	LANGUAGE	GRADES							SPECIAL EDUCATION
		K	1	2	3	4	5	6	
21	BILINGUAL (ENG/SPAN)								
22									
23									
24									
25									
26									
27									
28									
29									
(7-8)	9-28	29-31	32-34	35-37	38-40	41-43	44-46	47-49	68-70

SECTION III

1. Will the district include native English speaking children in the total bilingual program? Check one.

___ 41 YES

___ 42 NO
(7-8)

2. If the district has less than 20 children of limited English speaking ability at any grade level, the following action will be taken: Check one or more.

___ 51 Establish a bilingual program.

___ 52 Enter into a cooperative program with a neighboring district to establish a bilingual program.

___ 53 No action planned.
(7-8)

____
SIGNATURE OF SUPERINTENDENT

EACH

I. Name of School System____________________

II. Name of School Campus____________________

See definitions on reverse side of this page.

TEXAS EDUCATION AGENCY
Fall Survey Package
Campus Form #2
"Education of Disadvantaged Pupils"
October 15, 1975

This information is requested under authority of Section C, CURRICULUM AND COMPENSATORY EDUCATION, of Court Order, Civil Action 5281, United States District Court, Eastern District of Texas, Tyler Division

____
COUNTY-DISTRICT, CAMPUS NO.

I. Indicate whether each of the following educational situations apply to your campus. If the situation does apply, place a (√) in Column A next to the program(s) now offered by your campus to treat the situation; in Column B insert the approximate number of pupils each program checked will serve this school year, and in Column C insert the average number of hours of structured staff development each teacher will receive for each program during the 1975-76 school year.

EDUCATION SITUATION	A	B	C	PROGRAMS OFFERED BY CAMPUS *
1. More than 5% or 20 pupils (whichever is less) comprehend and/or speak a language or dialect other than that of the school. This situation applies Yes_____ No_____				01. Bilingual Education
				01a. Use Dominant Language for Inst.
				01b. First Language Instruction
				01c. English as a Second Language
				01d. Skills Development - Read./Math.
				02. Bidialectal Language Instruction
				03. Communications Development
				04. Reduction - Dialect Interference
				05. Sequencing of Reading Skills
				06. Other
2. More than 25% of pupils in any class perform one or more grade levels below grade placement in one or more of the reading or mathematics skills, according to scores from objective tests.** This situation applies - Yes_____ No_____				07. Developmental Reading
				08. Discovery-Based Mathematics
				09. Other

EDUCATION SITUATION	A	B	C	PROGRAMS OFFERED BY CAMPUS *
3. More than 5% or 20 pupils on the campus (whichever is less) perform reading and/or mathematics skills two years or more below their grade placement.** This situation applies - Yes_____ No_____				10. Clinical Teaching of Reading
				11. Individualized Inst. in Math.
				12. Other
4. More than 10% of the pupils perform one year below grade placement or 10% are failing in one or more areas: Science, Social Studies, Fine Arts, English Language Arts, Mathematics.** This situation applies - Yes_____ No_____				13. Processes & Inquiry App.
				14. High Motivation Programs
				15. Culture Based Social Studies
				16. Social Impacts - Cultural Groups
				17. Appreciation - Cultural Div.
				18. Foreign Language Instruction
				19. Composition Through Film Study
				20. Social Humanities
				21. Bilingual Literature & Rhetoric
				22. Multi-cultural Fine Arts
				23. Other

II. Indicate with a check (√) if your campus offers the listed program or service to all pupils:

	24. An opportunity to participate in a structured program of career education
	25. An opportunity to participate in vocational education offerings including cooperative programs and related youth activities which will result in the development of a saleable skill of his choice
	26. Evaluation and testing procedures which take into consideration the language, cultures, and life styles of minority group children
	27. An opportunity to participate in a bilingual education program where essential to educational progress
	28. Guidance and counseling services by persons who have received special instruction concerning the language, cultures, and life styles of minority group children
	29. A variety of supplementary instructional materials (books, films, etc.) designed to reflect accurately the life styles of minority groups

III. The campus utilizes one or more functioning committees, representative of the children being served, in planning the following: (check where applicable)

☐ 30. Instructional Program ☐ 31. Ancillary Services ☐ 32. Parental Involvement Program ☐ 33. Human Relations Program

IV. Use of a language other than English is discouraged on the campus (except during foreign language instruction and special programs).
Yes_____ No_____

*Complete and unabbreviated Program Titles are on reverse side.

**A district may determine this by use of norm referenced tests, criterion-referenced tests, or other objective measures.

Each of the following are presented as school programs, defined as a planned activity or series of activities to achieve a definite goal.

01. **Bilingual Education**

01a. **Use Dominant Language for Instruction**-- Bilingual program in which content in any subject area is presented in the child's dominant language.

01b. **First Language Instruction** - Bilingual program in which children develop and extend their first language (home language).

01c. **English as a Second Language** - Bilingual program in which English is taught as a second language to speakers of other languages.

01d. **Skills Development in Reading and Mathematics** - Program in which instruction in reading and mathematics skills begins in the child's dominant language.

02. **Bidialectal Language Instruction** - Program in which standard English is taught as a second dialect.

03. **Communications Development** - Program in which language instruction builds upon dominant language or dialect of the child such as Spanish for Spanish speakers and utilization of various dialects in instruction.

04. **Reduction of Dialect Interference** - Program in which reading instruction is adapted to accommodate dialect differences. Such programs will allow each child to see the relationship between his own oral language and the printed word.

05. **Sequencing of Reading Skills** - Program in which oral language and reading skills are identified and taught in sequence.

06. **Other**

07. **Developmental Reading** - Program in which instruction in developmental reading, grades K-12, includes teaching of specific reading skills and incorporation of materials and methods based on language, interests, and background of students.

08. **Discovery - Based Mathematics** - Program in which instruction in developing mathematics skills involves pupils in laboratory situations and discovery techniques.

09. **Other**

10. **Clinical Teaching of Reading** - Program in which reading instruction is based on a program of continuous diagnosis of difficulties and prescription of remediation.

11. **Individualized Instruction in Mathematics** - Program in which mathematics instruction is individualized and based on the discovery process.

12. **Other**

13. **Processes and Inquiry Approaches** - Program in which children develop science and mathematics concepts through the use of scientific methods of inquiry.

14. **High Motivation Programs** - Program in which pupils develop concepts based on involvement in decision-making activities commensurate with their abilities and maturity.

15. **Culture - Based Social Studies** - Programs in which instruction in social studies helps pupils to identify with patterns of history and cultural diversity.

16. **Social Impacts on Cultural Groups** - Programs in which instruction helps pupils understand the impact on individuals and cultural groups of such forces as propaganda, mass media, prejudice and conflict, and changing economic and technological patterns.

17. **Appreciation of Cultural Diversity** - Program in which instruction is given in the lore, music, art, drama, literature, and language of differing cultural groups.

18. **Foreign Language Instruction**

19. **Composition Through Film Study** - Programs in which students utilize filmmaking as a vehicle for learning composition.

20. **Social Humanities** - Programs in which patterns of behavior that pupils have learned at home or in their neighborhoods become the basis of the study of speech, social studies, language, literature, and fine arts.

21. **Bilingual Literature and Rhetoric** - Program in which textual material in Spanish and English are used in the study of literature and rhetoric.

22. **Multi-cultural Fine Arts** - Program in which music, art, literature, and drama from various cultures are used.

23. **Other**

24. **Career Education** - A program designed to expose pupils to a wide variety of occupational experiences, models, and choices for career opportunities.

25. **Self explanatory**

26. **Self explanatory**

27. **Self explanatory**

28. **Self explanatory**

29. The instructional program is curriculum, methodology, materials and supplementary activities which are the core of the pupil's educational experience.

30. **Self explanatory**

31. **Ancillary Services** - Those provisions for the mental and physical well being of the child that are in addition to the regular curricular offerings.

32. **Parental Involvement** - A planned systematic approach of eliciting the knowledge and skills of parents and utilizing their input to facilitate their child's learning in school and the schools understanding of the parents' point of view.

33. Human relations programs are those in which diverse segments of the community gain information about the lifestyles of each other so that mutual understanding is achieved.

Prepared Statement of the National Education Association, Washington, D.C.

The National Education Association is a professional, independent, nonprofit organization of 1,700,000 members, most of whom are classroom teachers in public schools and institutions of higher learning in all of the states, territories, and Department of Defense overseas schools. We wish to state our appreciation to the Subcommittee for the opportunity to present this statement.

The civil and human rights of students have been and are a direct concern of the NEA. We have been alarmed at the increasing rate of suspensions, expulsions, and other actions against the right of students to obtain an education, let alone an equal education, in many school systems which desegregated for the first time in the late 1960's and early 1970's. We have taken leadership in cooperation with other organizations in calling attention to the problems of student pushouts and in calling for action to provide effective remedies for these problems, in the interests of both students and their teachers. We have noted in particular a close correlation between violations of the rights of teachers and violation of rights of students in communities where administrative and organizational policies have been careless of—if not deliberately discriminatory in regard to—the quality of education received by poor and minority students.

In January of 1972 the NEA met in Atlanta with representatives of state teacher associations, the Urban League, the Southern Christian Leadership Conference, the NAACP, the Southern Regional Council, the American Friends Service Committee, and other major private organizations, plus representatives of federal agencies, including the Department of Health, Education, and Welfare. One major result of this meeting was the establishment, at NEA, of a national clearinghouse for information on student pushouts.

The clearinghouse received news clippings and other reports from the eleven southern states which determined that, over the twelve-month period between March, 1971, and March, 1972, there occurred approximately 25,000 cases of suspensions and expulsions and 2,570 arrests of students growing out of protests, walkouts, and other school disruptions. Many of these situations resulted from student objections to dismissals and demotions of black teachers and principals in desegregating school districts. Many others were in direct opposition to harsh and discriminatory discipline policies adopted in the wake of school desegregation. The shocking thing about this information is that it is based on news clippings which people happened to send in and that the data cover only one-tenth of the total number of school districts in this region. Based on this sampling and some impressive data from a number of independent reports at that time, our estimate of the number of suspensions per year in the 17 southern states was 200,000.

The focus of our activity in this area during that period was on the victims of arbitrary practices in school districts undergoing school desegregation, but we were able to identify systematic differential treatment of minority students in school, including especially blacks, Puerto Ricans, Chicanos, and American Indians, although children of other racial and ethnic groups also apparently suffered difficulties in school systems geared to others. It is important to note that white children throughout the nation are also victims of the pushout syndrome, most notably those who come from poor families with little opportunity for effective advocacy or defense of their rights. It is because all of these groups are so affected that the NEA believes that federal data collection related to severe disciplinary actions and reassignments into segregated learning situations must continue. Racial and ethnic identification in these surveys serves as one index in measuring the consequences of arbitrary policies; but to focus only on schools with high minority populations would be to ignore the seriousness and extent of policies and actions which have just as severe consequences for the individuals affected in every other school district in the nation.

Enough information and documentation have been provided to the Subcommittee and to the press concerning the problems of student pushouts to justify a national sense of scandal that such a phenomenon could occur and continue to exist in our culture. The reports of the Children's Defense Fund, the Southern Regional Council, the Harvard Center for Law and Education, the NEA, and others, are specific and clear. They also have a common characteristic which is fundamental to this testimony. They are virtually all based, of necessity, on data obtained by the HEW Office for Civil Rights in its annual school survey. Documentation of the seriousness and extent of the student pushout problems would not be possible without the collection of data by HEW, since no other agency or private organization has the resources, the legal authority, or the mandate to collect such information so vital to the educational well-being of so many youngsters.

For these reasons, we find ourselves dismayed by the nature of testimony presented to this Subcommittee by representatives of some of the other education organizations. While we join with them in deploring any unnecessary record keeping, we find the basic arguments in favor of retention of the HEW Office for Civil Rights memorandums of August, 1975, overwhelming. To say the least, we find it difficult to comprehend the resistance to record-keeping in such serious areas as those identified in the HEW memorandum.

Moral issues abound with respect to the responsibilities of school systems in the treatment of students and the collection of information regarding such treatment. The rulings of the Supreme Court of the United States in *Goss* v. *Lopez* and *Wood* v. *Strickland* are so clear that the urgency of the August 1975 memorandum and its intent should impress itself on all of us who profess an interest in the welfare of young people, let alone our own self-interest in maintaining clear and adequate records in light of those important rulings.

In short, record-keeping and reporting are fundamental to the protection and the well-being of students. We call upon the Congress to reject out of hand the absurd notion of a moratorium on record keeping and to reaffirm support for the HEW Office for Civil Rights in its efforts toward the protection of the rights and educational opportunties of American young people.

The NEA's basic position with regard to the question of a moratorium or any restriction on record keeping practices of HEW in such areas of student rights as outlined in the August memorandum are simply put forth.

1. The NEA is in support of the intent and wording of the HEW directive of August, 1975.
2. The NEA commends the HEW Office for Civil Rights for taking action in data collection and in protection of student rights consistent with its mandates under the law.
3. Evidence reported by the Southern Regional Council, the Children's Defense Fund, and others clearly indicates the urgency of effective information-gathering in light of persistent discriminatory consequences in disciplinary actions and the excessive use of suspensions in many school districts.
4. More attention must be given to appropriateness of alternative disciplinary practices or specific educational remedies as replacements for suspensions. Documentation of current practice makes possible the development of appropriate alternate solutions.
5. The HEW directive does not place excessive demands, particularly since most school systems already record such information and should therefore have it available with a minimum of expense of time and financial resources. If school districts exist which do not adhere to such practices, they should obviously develop them, and the HEW memorandum lays out in a highly practical manner the kinds of information which should be recorded.
6. In effect, the only new feature in the HEW directive is that serious actions as indicated must now be broken down by race and sex, an obvious need for districts in light of *Goss* v. *Lopez*, *Wood* v. *Strickland*, and the extensive documentation which has already been made available.
7. Our administrative colleagues appear to argue for standardization of reporting requirements by HEW, a position which we would readily support with due regard to protection of privacy in the exchange of information. We believe that coordination of data collection and evaluation will be more efficient because of the HEW directive, and we support that development.
8. The HEW memorandum requires reporting on only a minimum number of student actions with the most serious consequences. If districts have local needs for additional data collection, this should be permitted, but standardization in the reporting process on the items listed is essential for efficient administration of data collection at both the local and the federal levels.
9. Since the Council of Chief State School Officers has indicated in its testimony that mechanisms for such data collection are in existence, we are at a loss to understand the difficulties.
10. The NEA believes that federal agencies have already taken too long to exercise responsibility with regard to the student pushout problems. To ask students to wait one more year before we can begin to evaluate available information is both nonresponsive to the problem and inexcusable.
11. The kinds of disciplinary actions to be reported include only those with potentially the most severe infringements of the student's right to education.

Since routine classroom disciplinary actions are not covered, this should pose no serious problem, although some districts, notably El Paso, Texas, have misinterpreted the memorandum to mean that teachers should record virtually all problems relating to children. This is an administrative misunderstanding which may require further clarification.

12. Existing laws and regulations are clear with respect to the authority and responsibility of recipients of federal funds to keep and report timely, complete, and accurate compliance reports. Any moratorium on this requirement or restriction of existing authority will seriously hamper efforts to obtain reliable information and will further penalize poor and minority children.

The National Education Association recommends that the Subcommittee consider several recommendations arising from the current controversy.

1. We recommend that procedures and guidelines as outlined in the August, 1975 memorandum be retained in full.
2. We recommend that support be reaffirmed for necessary record-keeping and collection and for appropriate actions in support of students denied educational oportunity.
3. We call upon the Congress to recognize that disproportional consequences of disciplinary or reassignment actions on the basis of race or sex constitute *prima facie* evidence of unequal treatment and serve as a primary indicator of the need for appropriate interventions to bring about the provision of more adequate policies, practices, and programs to meet the needs of young people in our nation's public school system.

SOUTHERN REGIONAL COUNCIL,
Atlanta, Ga., October 30, 1975.

Congressman CARL D. PERKINS,
Committee on Education and Labor, Subcommittee on Elementary, Secondary and Vocational Education, Rayburn House Office Bldg., Washington, D.C.

DEAR CHAIRMAN PERKINS: We are in receipt of your letter dated Oct. 3, 1975, inviting written testimony from the Southern Regional Council on the recently released Office of Civil Rights Memorandum dealing with procedures for suspensions.

Let us first commend your subcommittee for showing sensitivity and foresight in calling for insights for a wide spectrum of organizations and individuals on how to deal with what is rapidly becoming a major problem in our society and a problem which our data shows, appears to be exacerbated with the mishandling of youth in desegregating/desegregated schools. We refer to the problem of children out of schools, especially through direct actions of school personnel.

In 1970 the Council (SRC) first became aware of what appeared to us to be a new breed of elementary and secondary school age young people out of schools, which appeared to be most pronounced as school systems underwent large scale desegregation and appeared to drop somewhat and then stabilize after 2 or 3 years. But our findings indicated that minority students were to be found in this category (new breed) disproportionately to their numerical percentages in a given school and/or school system and remained disproportionate even when schools had stabilized after the first wave of large scale desegregation.

We came to refer to these young people as a new breed—push-outs, because our extensive work with them and the work of others indicated to us that (1) most of them were desirous of going to school, (2) many of them had exemplified leadership qualities during and after their tenure in school and indeed, in some cases it appeared that because of their providing leadership to other students as they attempted to deal with problems in their schools, they were suspended or expelled and (3) the vast majority of those encountered by us were mindful of the need for the supportive of school rules and regulations but they were rebellious against what they perceived as double standards and a "tow of the line" where black students were concerned. As is obvious, I speak primarily of black students, though in our experience, many white students, who in those days were referred to as "long hairs" and who were establishing relationships with and coming to the aid of black students whom they perceived as being treated un-fairly by educators, were also being driven from the schools.

As a result of these and other observations by members of our staff and based upon the Council's commitment to equal opportunity for all Southerners, we commissioned a study, which further substantiated our initial findings.

With this bit of background we now come to the specific question raised in your letter to us—comments on OCR's suspension memorandum.

First and foremost the above mentioned memo represents the most definitive statement by HEW of its intentions regarding their responsibility under Title VI of the Civil Rights Act of 1964. In that we (SRC) have devoted a great deal of energy to prodding HEW into taking action on this problem (push-outs) to no avail, we obviously greeted the announcement of this memo with a great deal of optimism, though we sat cautiously awaiting OCR's traditional botching on this problem. Hence when the cries of school administrators went up, over the insensitivity they perceived from HEW, i.e., sending out a very concise and far reaching directive, which in many cases means developing systems and keeping data that state offices of education and indeed many local systems do not normally keep, barely a month preceding the opening of schools, we found ourselves in a position of wondering "was/is this just another case of OCR's ineptitude or is this poor timing designed to insure the predictable response from administrators?" (A response which anyone familiar with the poor state of records in many, many public school systems, should know, was to be expected.)

Following are several of the key conclusions and recommendations contained in the report alluded to earlier and which is enclosed:

CONCLUSION NO. 1

The Department of HEW and the Department of Justice, mandated by the Constitution and Federal law to the guarantors of equal educational opportunity, have largely relinquished their legal and moral functions under the Nixon Administration (despite the earnest efforts of many dedicated officials), and have too often turned deaf ears and blind eyes to persistent denials of equal protection of the laws and violations of Federal statutes and regulations.

RECOMMENDATIONS

1. In a public statement of national policy, HEW should assign the highest priority to programs supporting quality integrated education and to the enforcement of compliance with civil rights standards. Further, HEW should officially promulgate an up-dated version of the "Task Force Statement on In-School Discrimination" which was promised to a Congressional Committee, put into a final draft, and then buried in July, 1970, and should rigorously enforce the terms of the statement consistently with the court decree in *Adams* v. *Richardson.* Formal enforcement proceedings under Title VI of the Civil Rights Act of 1964 should be instituted wherever in-school discrimination or the discriminatory administration of discipline is shown to exist, and where other forms of persuasion fail to deter or correct the objectionable practice or policy.
2. HEW should move immediately to relieve the severe budgetary and manpower constraints of its national and regional civil rights offices. A high priority should be placed on in-depth monitoring of desegregation progress, especially in school districts reporting substantial student displacement. Special emphasis should be placed on monitoring compliance with the assurances of non-discriminatory discipline required of ESAA grantees. HEW should hire and train its own force of hearing examiners (rather than relying on personnel from other bureaucracies), who should be exclusively assigned to complaints involving desegregation problems including in-school discrimination and student displacement.

CONCLUSION NO. 5

Principals, teachers, and counselors vary widely in their application of disciplinary measures, especially in the use of suspension and expulsion, and especially against black students. Their authority to use these measures also varies. Concentration of decision-making authority in a few school officials multiplies the likelihood of prejudice or unfairness in disciplinary proceedings. Due process in disciplinary cases is often not provided to students or is employed with irrational variation. Rules and regulations vary equally as much; they are sometimes in writing, sometimes not; and if they are in writing, students often are unaware of that fact or have not been given the written codes. Thus, students frequently neither understand nor respect the rules, and face unfair treatment when violations occur. State laws and regulations relating to school attendance, the definition of infractions and provision of due process, the authority and powers of superintendents and principals, and the use of suspension and expulsion vary considerably. State laws are often negative in concept, and the positive responsibility of the state to educate young people in non-discriminatory public schools is neither stated nor, in most cases, accepted as a mandate.

RECOMMENDATIONS

1. Students are fully entitled to procedural due process, which should always include at least notice of charges, notice of adverse witnesses and testimony, a fair hearing in which accused students may present supporting evidence and witnesses and be represented by an attorney, and the requirement of substantial evidence as a basis for any serious disciplinary action.
2. The basic laws of each state and their regulatory guidelines must be in line with the U.S. Constitution, and be written in a general but unambiguous enough way to allow for flexible but non-discriminatory use in the formulation of reasonable and fair school regulations.
3. Within any given school district, and to the greatest extent possible within any given state, school codes and regulations should be uniform, reasonable, and oriented to contemporary cultural life styles in our pluralistic society. In particular, archaic and restrictive codes for dress and grooming should be eliminated.
4. All states should formulate for themselves a positive statement, within the law, that embodies the responsibility of states for the education of young people in desegregated and non-discriminatory schools.
5. State agencies and school districts should create offices of human and race relations that have powers to mediate disputes concerning student conduct as well as the responsibility to develop in-service human relations and cultural pluralism training programs for all future teachers, counselors and administrators.
6. State offices should conduct regular annual surveys of school desegregation progress as well as attendant problems. They should develop guidelines for handling the problem of increased use of suspensions and expulsions, and offer positive suggestions and assistance in developing alternatives to severe disciplinary measures.
7. The Singleton decision and other Federal court decisions relating to the racial composition of school faculties must be adhered to.

CONCLUSION NO. 7

The false and divisive issue of school busing has deflected the attention of Congress from the serious problems of in-school discrimination, and particularly the pushout phenomenon. Renewed Congressional interest in the progress and problems of desegregation is vitally needed. Both the South and the nation would benefit from an in-depth Congressional investigation of the situation which is producing pushouts, as well as of the positive lessons that have been learned.

RECOMMENDATIONS

1. The authorizing and investigative House and Senate Subcommittees with responsibilities in the field of education and civil rights compliance should give priority attention to the complex problems of in-school discrimination, with particular focus upon the pushout phenomenon. In-depth hearings on the experiences of school districts which have avoided or eliminated pushouts, as well as those where pushouts are an acute problem, would be most beneficial. In this regard, the vast amount of pushout-related statistical data collected but largely unused by HEW would be highly relevant. Congressional examination of the relationship between suspensions and expulsions on the one hand, and dropout and juvenile justice offenders on the other, would be particularly valuable. Congressional hearings might also be the best way to determine the "social cost" of student displacement.
2. The GAO should be asked to investigate and report on the use of Federal funds in desegregated school districts, with particular focus upon those districts in which there is statistical evidence of large and disproportionate minority displacement.

CONCLUSION NO. 8

Accurate and comprehensive statistics on suspensions and expulsions, by race, are unavailable in most states and school districts (although expulsion figures are reported annually to HEW). As far as we know, nowhere do statistics reflect grounds for expulsion and suspension, the duration of time suspended and expelled students are out of school, or the relationship between being suspended or expelled and becoming a dropout. HEW makes extremely limited and unimaginative use of the data collected annually through OS CR 101 forms and until this school year has never attempted to gather statistics on suspensions. The collection, maintenance, and creative use of pushout-related data must become a high priority for Federal, state and local officials responsible for eliminating racial discrimination from American education.

RECOMMENDATIONS

1. HEW's Office for Civil Rights should add a new data category to the OS CR 101 form concerning suspensions: school districts should be required to report (a) number of suspensions, by race; (b) grounds for suspensions (within a few basic specified categories); and (c) duration of suspensions. Further, the OS CR 101 form should attempt to provide correlations between students who are suspended or expelled in one school year and those who are counted as dropouts in subsequent years. OCR has stated its plans to move in this direction.

2. HEW should make far greater use of the vast amounts of pushout-related data it collects via OS CR 101 forms and ESAA applications. Advanced computer analysis of this data (including multiple cross tabulations) should be routinely generated and up-dated; current 101 form data is computerized but is virtually unused. Data analysis should be made readily available to concerned private organizations.

3. State offices of education should require uniform reports from school districts, and districts from individual schools, on dropouts, suspensions, and expulsions, by race, sex, grade level, length of time, and reason. In addition, the process to determine punishment used by the individual school in each case should be specified.

In conclusion, the Council is mindful of the obvious difficulty of going from no *system* of data collection, review, storing and retrieving to a definitive and workable system, the situation most Southern state departments and local school systems are to be found in, in regards to the data sought by HEW, private agencies and others. As a result we strongly recommend that (1) HEW mandate SEA's and all LEA's to develop record keeping systems this school year and submit their plans to OCR for review and approval before the end of the present school year; (2) no federal funds should be made available for the above proposed gearing up process.

We sincerely appreciate the opportunity to add our voice to those who are aware of and committed to ending the travesty against young people and our broader society, which we have come to accept as the pushing out of young people desirous of and in need of a good education.

Sincerely,

GEORGE H. ESSER, JR.,
Executive Director.
LEON HALL,
Education Program Officer.

THE NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS,
Reston Va., October 14, 1975.

HON. CARL D. PERKINS,
U.S. House of Representatives.
Rayburn House office Building, Washington, D.C.

DEAR MR. PERKINS: Because of the apparent shortage of time available at the hearing held by the Subcommittee on Elementary and Secondary Education, we did not testify on the issues raised by the Memorandum sent to all chief state school officers, and apparently to all school districts, concerning records to be kept on all student suspensions.

We are, however, very concerned with both the manner in which this action was taken and the unfair administrative burden thrown upon every school in the nation. As our enclosed letter to Secretary Mathews of the Department of HEW indicates, we fully share the desire of the Department to eliminate racial discrimination wherever it exists, but cannot support efforts to do so in ways which are wasteful of great amounts of scarce and valuable administrative time, and are of doubtful value.

In closing, let me commend you and the Committee on its concern with the issue.

Yours very sincerely,

OWEN KIERNAN,
Executive Secretary.

Enclosures.

THE NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS,
Reston, Va., October 8, 1975.

Hon. DAVID MATHEWS,
Secretary, Department of Health, Education, and Welfare,
Washington, D.C.

DEAR SECRETARY MATHEWS: I am writing to express my concern and that of our Association about the record-keeping procedures set forth in the memorandum sent to all chief state school officers in August by Mr. Martin Gerry, then Acting Director of the Office for Civil Rights in your Department.

As you undoubtedly know, the memorandum requests that the chief state school officers inform school systems under their jurisdictions "of the necessity to keep and retain complete records of student disciplinary actions and procedures." The material and procedures then set forth include not only the name and race of each student disciplined, and a description of persons reporting the offense and imposing the discipline, but also a "concise procedural history leading to the disciplinary action or actions from the initial reporting of the offense through final disposition of the case," and should include as well "which alternatives to the disciplinary action, if any, were considered prior to the imposition of the disciplinary action."

This narrative account of each disciplinary incident is only one of eight kinds of documents requested to be maintained in the memorandum.

I know that this matter has already been brought to your attention, and that you have indicated your intention to review the memorandum. I know, too, that you are already on record as being opposed to heavy-handed attempts by the federal government to take over or run local or state governmental functions. I am confident, therefore, that after review of the OCR memorandum, you will agree that it is a particularly flagrant example of such governmental regulation.

To make matters worse, the memorandum is unclear as to whether it is an administrative regulation with the force of federal law behind it, or merely a request for help from one governmental official to another. While most of the language is phrased as a request, the final paragraph refers to the procedures described as "requirements." Such ambiguity is certainly not desirable in regard to a matter which would involve over-burdened school principals and other officials in literally millions of man hours of work.

It is the amount of work involved in the requests made in the memorandum that is the primary basis of our members' complaints, of course. As mentioned in the copy of our enclosed statement just submitted to the Senate Subcommittee on Juvenile Deliquency, we are as desirous as anyone to eliminate any and all kinds of racial discrimination from our schools and the society generally (p. 6). But statistics alone are not proof of discrimination. They do draw attention to situations in which discrimination may exist, and in such cases the OCR should investigate further, collecting and analyzing additional information needed upon which to base a reasoned judgment.

But even if it is assumed that discrimination does exst in some schools across the country, it does not warrant the wholesale imposition of onerous and time-consuming record-keeping upon the thousands of schools and their administrators who are innocent of any discriminatory action whatever.

On behalf of our Association, I reextend best wishes upon your work as Secretary, and if we can be of any assistance in dealing with this or other problems facing the nation's secondary schools, please be assured that you have our full cooperation.

Yours very sincerely,

OWEN KIERNAN,
Executive Secretary.

PREPARED STATEMENT OF DR. OWEN B. KIERNAN, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS

The NASSP presented testimony before the Subcommittee in its first set of hearings on the subject of violence and vandalism in the schools on April 16, 1975. It did not, therefore, request the opportunity to appear again at the second series of hearings held September 17, 1975. Because the latter hearing focused on different but equally important aspects of certain school problems, and because no spokesman for educational administrators appeared, the NASSP feels that it is necessary to supplement its earlier testimony with this statement.

The focus of the September 17 hearings was announced to be (1) parental involvement in schools as an approach to the problem of violence and vandalism, and (2) the general subject of student rights and responsibilities, including suspensions, expulsions, and student codes.

PARENTAL INVOLVEMENT

Our major emphasis will be in the latter subject, but let us say, generally, on the matter of parental involvement that we fully support it and strongly believe that it is an important element, not only in the reduction of violence and vandalism in the schools, but in the overall process of maintaining an adequate environment in which successful education can take place. Indeed, in the recent Report of a Task Force of professionals and citizens concerned with secondary education on which I was privileged to serve, one of the primary principles agreed to was: "Citizens and parents must become more involved in the activities of high schools." (Introduction p. xvii of "The Adolescent, Other Citizens, and their High Schools,"[4] I.D.E.A., hereinafter referred to as the Kettering Task Force Report.)

With the advantage of having been able to review the testimony of the witnesses before the Subcommittee on September 17, I can truthfully say that there is nothing on the subject of parental involvement in the statements of the spokesmen for either the National PTA or the National Committee for Citizens in Education (NCCE) with which I—and I dare say most of our members—would disagree. I was particularly pleased with the statement of Mr. William Rioux on behalf of NCCE setting forth the rights and responsibilities of parents of school pupils. It is this kind of balanced approach that we, as principals, also believe should be taken toward parents, students, teachers, and, of course, administrators. Without it, no problem of education will be reduced, let alone eliminated.

Believing too with Mr. Rioux, that the best approach to the problem of violence and vandalism in the schools is one requiring "honest, plain-spoken collaboration between parents, students, educators, security personnel, and police" it is our intention to invite national organizations representing all of these interests to join the NASSP in an effort to develop solutions to the problem of violence and vandalism and to disseminate our findings to members of all of our groups. We would hope, and urge, that the federal government would cooperate with and assist us in this effort.

STUDENT CONDUCT AND DISCIPLINE

Turning to the other subject of the September 17 hearings, the NASSP was somewhat disappointed to note the absence of any administrator, teacher, or even student views presented on the important subjects of student conduct and discipline. Fortunately, several of those who presented testimony stressed the importance of taking into consideration the rights, responsibilities and general welfare of all of these parties to the educational process, as well as the parents and other citizens of the community.

Most, if not all of those who testified also recognized the importance of maintaining the educational process itself as well as protecting the rights of individual students participating in it.

It must be recognized, however, that these interests often collide, and in the day-to-day administration of a school, there is little value, and precious little time for philosophical statements or equivocal generalizations. Hard choices must be made, and made quickly. It was this reflection of the realities of school life which we find missing in most of the statements made at the September 17 hearing.

Many student advocate groups make brief acknowledgement of their concern with the interest of the public and the large majority of school pupils in maintaining a school environment in which the educational process can be carried on. Having done so, however, primary attention is focused upon the abuse of individual rights of those pupils accused of disrupting the process or of violating some other school rule. Before proceeding to some specific issues in the area of student conduct, let me be as definite and unequivocal as I can on this general issue. A school principal's first responsibility is to the school and to the very large majority of pupils and their parents who share its objectives. It is only within that context that the rights of those with other goals or objectives can be recognized.

As Mr. Rioux so clearly states, "All of the actors in this painfully real drama of violent behavior in schools have rights and responsibilities." Unfortunately, the rights of some of these actors will conflict with those of others, and choices must then be made, even if they are hard ones. Most principals will admit, however, that the choice is not difficult when it lies between the repeatedly violent or disruptive pupil and the rest of the pupils, and their parents. They would certainly subscribe to his statement, "Parents have a right to expect that their children will be physically safe in an atmosphere that should help them in their efforts to learn." We would further agree that, "Parents have a right to expect that their concern for the physical safety of their children will receive serious attention and response."

SUSPENSIONS AND EXPULSIONS

Despite repeated suggestions to the contrary by some witnesses, it is not our experience that the first impulse of administrators faced with problems of student conduct is to suspend or expel the student. Indeed, the Report of the Children's Defense Fund (CDF) is repleted with examples not only of individual principals seeking alternatives to exclusion of pupils, but articles and speeches presented through our organization and other professional educator groups on this topic. (See CDF Report, *School Suspensions, Are They Helping Our Children?* p. 90, footnote 37.) Other recent examples of efforts by NASSP are articles in our *Bulletin* of May 1975, p. 53, and *The Practitioner* of March 1975.

What principals and, I am sure, other educators resent is the tone of many outside critics whose major point seems to be to convince the public that the large majority of educators doesn't care about children and want only to rid themselves of any who cause any kind of disciplinary problem. We would submit that this is patently untrue.

In this connection, I must comment specifically on the report of the CDF and the testimony of its spokesman, Mrs. Marian Wright Edelman, concerning the reasons for expulsion and suspension. This aspect of the Report has drawn much attention because of dramatic charges such as these: The vast majority of suspensions were for non-violent, non-dangerous offenses. 25 percent were for truancy or tardiness. Less than 3 percent were for destruction of property, use of drugs or alcohol, or other criminal activity.

CDF indicated that its report was based on government figures (from data submitted by school systems to HEW's Office of Civil Rights) and from its own surveys. What is not made clear is that the OCR data only included numbers of suspensions, percent of students suspended, and comparisons of these numbers by racial categories. All of the data on *reasons* for suspension are drawn from CDF's own surveys, based on a much smaller sample than the OCR data, and were drawn totally from interviews with parents in their homes. The reasons for exclusion "given by school officials" are therefore based solely on the parents' opinion of what those reasons were.

While NASSP has not conducted any survey of its members on this subject, we plan now to do so, and are confident that the results will not support those of the CDF. One fact alone supports this expectation. Very few school districts permit the use of suspension for the kinds of minor, non-violent transgressions of such concern to some of the witnesses before the Subcommittee, unless the violation is a repeated one. In these cases, the suspension is actually imposed because of the demonstrated refusal of the pupil to comply with school rules, rather than the particular violation itself. Such continued refusal to follow the rules of the school, even after attempts to solve the problem have been made would certainly seem to be a legitimate reason for suspension. Perhaps this distinction escaped the CDF researchers.

Finally, we would note that the CDF Report itself notes that 36.6 percent of all suspensions in its survey were for fighting, but adds that only 1.6 percent were for fights with teachers or other school personnel. The rest were, in Mrs. Edelman's words, "ordinary student-to-student scuffles." So worded, suspension for this reason may sound like a harsh remedy but, as other witnesses have indicated, nothing is taken more seriously by parents than physical attack upon their sons and daughters. School principals would fully concur in this judgment, and financial liability assigned them by courts for physical injury resulting from such attacks has made it clear that the courts regard the prevention of such incidents to be a part of their administrative responsibility.

In regard to the findings of both the CDF and of OCR itself that a higher percentage of black students than white are the subject of school suspensions and expulsions, let me say on behalf of the NASSP that we are as distressed as anyone if these data result from racially discriminatory action by any educator. We must express the caution, however, that the disproportion in these statistics should not be automatically assumed to result from discrimination. The CDF's rejection of the view that the difference between the 4.4 percent suspension rate of all students and the 7.3 percent rate for all black students merely reflects the levels of misbehavior in the two groups may be correct, but there appears to be no evidence available as yet to support either contention. We would hope that further investigation will provide a better basis for an informed opinion. In the meantime, while we fully support the efforts of OCR and others to eliminate discrimination in school discipline wherever and whenever it is found, we would object to attempts to characterize all data evidencing a higher rate of discipline for blacks than for whites as proof of racial discrimination.

STUDENT RIGHTS AND RESPONSIBILITIES

In closing this statement, let me say just a few words on the subject of student rights and responsibilities, although clearly it is a very large subject. In the interest of brevity, and to narrow the issues as much as possible, let me try to dispel some of the spectres raised by earlier witnesses.

Every respectable educator would today agree that students have, and should enjoy, all of the basic constitutional and civil rights of other persons of their age and capacity. Furthermore, gain quoting the Kettering Task Force's major principles: "Students must be informed of their rights and assured that such rights will be supported by due process procedures." (Introduction, p. xvii.) Most principals would agree with Professor Robert Phay's testimony that the best way to meet this obligation is to establish a written code, with student participation, copies of which are distributed to all students.

Every respectable educator accepts the decisions of the U.S. Supreme Court as the law of the land, including the *Tinker* decision and the more recent decisions in the *Goss* and *Strickland* cases. What is more, contrary to some of the testimony before the Subcommittee, most educational administrators found little of concern in the *Goss* opinion regarding due process to be accorded in cases of short-term suspension. Certainly, this is the stated position of the NASSP.

What does trouble many educators, however, is the constant pressure of various groups for increased restriction of the use of all disciplinary powers by school authority. Suspension comes in for the major share of criticism, but if pressed, such groups as the American Civil Liberties Union, as it made clear in its testimony to the Subcommittee, are equally opposed to corporal punishment, transfer to other schools, or even to special alternative educational programs. Any expressions of understanding and acceptance of the need for disciplinary action by school administrative personnel are quickly coupled with demands for so much of the due process required in a criminal court action, that such expressions can only be regarded as either a lack of candor or of understanding of the realities of life in a modern school.

In light of this total opposition to disciplinary solutions, one is hard-pressed to avoid the conclusion that groups espousing these opinions are not seriously concerned with solving disciplinary problems.

Many principals and other administrators believe that the real source of many discipline problems in our schools today is an over-concentration on the subject of student rights without an equal concern for the matter of student responsibility. One of the reasons for this is, no doubt, as stated in the Kettering Task Force Report that, "Rights are a legal requirement; for the violation of rights, the law provides remedies. Responsibilities, on the other hand, are not so clearly spelled out. Rights are stated; responsibilities are tacit." (p. 46). But this difficulty should not be permitted to obscure the necessity of balancing student rights with student responsibilities.

Without going into detail, these at least include responsibility to observe the constitutional rights of other individuals, student, teacher and administrator alike; the responsibility to try to learn, understand, and adhere to reasonably rules and regulations established by the board of education for the welfare and safety of *all* students; and the responsibility to undertake some kind of commitment to develop his own capacities so that he can take his place as an informed and independent member of adult society. Further details are given in the previously-mentioned Kettering Task Force Report which devoted an entire section to this subject. (pages 43–63).

As a final footnote for future thought, I would go further and suggest that the notion of individual responsibility should be every bit as important to students themselves as is that of student rights. My implication here is not the importance of each individual doing something for society, though that is certainly desirable. I mean rather that, without a sense of personal responsibility no one in a free society can have a sense of personal worth. Most rights, after all, no matter how fundamental, have been conferred upon us by society or are protected by it. Responsibility can only be earned and accepted by the individual. Equal attention to this matter by everyone concerned with American education might cause many of the problems being investigated by the Committee to recede more rapidly than by the search for more technical and expensive solutions.

Thank you.

PUBLIC SCHOOLS,
Gloucester City, N.J., October 3, 1975.

Rep. CARL PERKINS,
Chairman, House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN PERKINS: I would like to express my deep concerns related to the Memorandum sent to the Chief State School Officers by the Office of Civil Rights (DHEW–OCR). The memo deals with the kind of documents pertaining to student discipline that must be retained by all school systems receiving federal funds. It is my understanding that a hearing by a subcommittee of the House of Education and Labor Committee will be held on October 9, 1975.

Concerns: 1. It is impossible to maintain a learning environment and attempt to discipline students via a percentage balance, as it relates to sex, race, etc. 2. Suspension and expulsion are legitimate methods to control the *learning environment* under present school funding schemes. Alternative schools or classes to meet the needs of chronic discipline problems will take additional fiscal school support. Where is it coming from? The type of remedy outlined in the Memo is unrealistic when we look at staff capabilities and the present reduced budgetary and program considerations.

Thank you for your considerations of the thoughts of a "grass root" Superintendent of Schools on the issue.

Sincerely,

THOMAS W. SYKES,
Superintendent of Schools.

SCHOOL ADMINISTRATORS OF SOUTH DAKOTA,
Brandon, S. Dak., October 6, 1975.

Rep. CARL PERKINS,
Chairman, House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR SIR: Administrators are very concerned regarding the Department of Health, Education and Welfare Office of Civil Rights' recently announced rules and regulations pertaining to student discipline.

Our organization and our individual administrators are concerned about discrimination against anyone in any way and certainly will not condone it. But to saddle already heavily loaded administrators with a cumbersome and ridiculously detailed record of every discipline problem is unjustified.

We feel our administrators should instead put this time toward the improvement of educational opportunities for all students, and this would benefit minorities much more than the time spent in ridiculous detailed record keeping.

The proposal is unrealistic and certainly unworkable in view of the demands on time and finance.

Please review this regulation from a practical and realistic approach.

Sincerely,

MORRIS W. MAGNUSON.

OHIO ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS,
Westerville, Ohio, October 2, 1975.

Hon. CARL D. PERKINS,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. PERKINS: It has come to our attention that a hearing of the Education and Labor Committee will be held on October 9th and one of the agenda items will be discussion of a memorandum sent from HEW to all State School Officers soliciting their assistance in informing local districts of the new HEW policy on student record keeping procedures on disciplinary actions in local districts.

OASSP objects strenuously to the new requirements of the HEW. As we interpret the memorandum, its intent is to place an onerous burden on school principals in regard to record keeping procedures. We feel this type of burden is unnecessary, unwarranted, and will serve no useful purpose.

We urge you to assert your authority and prevent the procedures required by this memorandum from being enforced. We also would suggest that all new procedures or policy changes by HEW be initiated in the Federal Register so that they can be examined and interested parties can comment on them prior to their implementation.

Thanks for taking the time to consider our position. If we can be of further assistance in this regard, please notify us.

Sincerely,

WILLIAM L. MURPHY,
OASSP Staff Associate.

AGUA FRIA UNION HIGH SCHOOL,
Avondale, Ariz., October 6, 1975.

Representative CARL PERKINS,
Chairman, House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN PERKINS: I am writing regarding the DHEW-OCR Federal Survey covering disciplinary actions in the 1972-73 school year which shows that minority students account for 38 percent of the total enrollment, but account for 43 percent of the expulsions and 49 percent of the suspensions. The statistics may be correct because I have found in my 20 years in school administration that whatever reason the minority students do account for more disciplinary actions, particularly suspensions and expulsions. However, I can assure you that an administrator only deals with problems when these problems are brought to his attention. I have never known an administrator yet who has the time to go out looking for people to suspend or expel. They are much, much too busy people for this type of conduct.

I would extend an invitation to any member of the Office of Civil Rights or to any member of the House Education Labor Committee to visit our school district at any time and spend some time observing the work of administrators. I sincerely feel that members of these committees would be both astonished and pleased with what they see. I am confident they will find almost without question administrators who have the responsibility for disciplinary action are both hard work, honest and ethical individuals. They will also find that the matter of ethnic background means nothing to the administrator when it is necessary to take disciplinary action.

To keep the kind of logs and the detailed information regarding disciplinary action on each student would be both expensive and totally unnecessary. This type of clerical work which is being expected of the schools in this matter and many, many other matters is doing nothing more than creating excessive clerical work, driving the per capita cost of education up, and accomplishing nothing except to consume the time of administrators which could be far better used in the conduct of the educational process.

I would like to take this opportunity to express my appreciation to you for your support of the veto override of the Education Bill.

Sincerely,

HAROLD W. PORTER,
Superintendent.

LITTLE ROCK PUBLIC SCHOOLS,
Little Rock, Ark., October 7, 1975.

Hon. CARL PERKINS,
House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE PERKINS: Requirements by the Department of Health, Education, and Welfare and then Office of Civil Rights for exhaustive reports are becoming increasingly punitive to local school districts. A prime example of this problem is presented in a DHEW memorandum of August 1975 entitled "Record Keeping on Student Discipline Procedures and Actions in School Districts."

Obviously these stringent requirements were imposed as a reaction to survey results which indicated that a greater percentage of minority students than majority students had been suspended or expelled during the 1972–73 school year. The results of each such survey seem to mandate more record keeping and reporting by school districts regardless of their records for fair treatment of students. I and many other school administrators do not object to reporting requirements that are coordinated and reasonable. However, repeated demands for exhaustive and, at times, duplicate information require excessive time and effort from our professional and clerical employees. Invariably, the school district is advised that failure to comply will or could result in loss of Federal funding.

The Little Rock School District does not suspend or expel students on the basis of their race or sex but for the commission of offenses that are defined and publicized as reasons for suspension or expulsion. A review of our records will reveal that we have complied with every request for information from DHEW and OCR and we will continue to do so.

However, we are requesting that reporting requirements from these regulatory agencies be consolidated and coordinated to a greater degree.

Sincerely yours,

PAUL R. FAIR,
Superintendent of Schools.

GRIFFIN-SPALDING COUNTY SCHOOL SYSTEM,
Griffin, Ga., October 6, 1975.

REPRESENTATIVE CARL PERKINS,
Chairman, House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE PERKINS: I have received a memorandum from the Department of Health, Education and Welfare concerning documentation of student discipline procedures and records which must be maintained by school systems now receiving federal funds. This matter was discussed at length last week at a state wide meeting of local school superintendents and we are very concerned about the action which has been taken by HEW.

We, in the Griffin-Spalding County School System, do not discriminate against any pupil through the use of suspension or expulsion. We do, however, maintain proper discipline among students and we will continue to take appropriate measures to insure that the behavior exemplified by students is conducive to an atmosphere of learning. The record keeping procedure suggested by HEW would necessitate our employing at least one additional person in each school solely for the purpose of maintaining discipline records as required by HEW. Lack of funds due to a sagging economy prevents our employing additional personnel even for instructional purposes.

The action taken by HEW is another example of federal intervention in local school problems. I strongly believe that Congress should look into the total operation of Department of Health, Education and Welfare and give serious consideration to restricting this department in many of its endeavors. Most of the information requested by HEW relates in some way to minority students and it appears that those persons at HEW requesting this information are themselves members of the minority race and seemingly are concerned with problems of minority students only. We have never purposely discriminated against any individual because of his race nor will we tolerate those who might do this. I do not believe that the members of Congress are aware of many of the activities being conducted by HEW. I dare say that if a thorough investigation was conducted, Congress and the general public would be much more upset over HEW's activities than on matters related to CIA operations.

We, in the Griffin-Spalding County School System, are interested in educating every youngster within our school district to his fullest extent. We do not have the time nor money to employ persons to handle such minor details such as those outlined in this letter. However, as I have stated before, we will not condone disruptive behavior and we will take appropriate steps to insure that those children who are misbehaving or whose actions are inappropriate for school children will be dealt with severely.

I would appreciate your looking into this matter and if at all possible take appropriate action which would prohibit the Department of Health, Education and Welfare from mandating such requirements for public schools. Thank you for your assistance and if I may provide you with additional information please do not hesitate to call upon me.

Sincerely yours,

D. B. CHRISTIE,
Superintendent.

EAST PALESTINE CITY SCHOOL DISTRICT,
East Palestine, Ohio, October 7, 1975.

CARL D. PERKINS,
Chairman, Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR SIR: I am writing in regards to the memorandum concerning the requirements necessary on record keeping for disciplinary actions for the H.E.W. department. I feel that this action would place unnecessary and unimportant paper work upon the already burdened duties of school administrators.

This is especially true in our system where we have no distinct minority groups. We are all Americans.

Respectfully,

LAWRENCE F. PONTUTI,
Principal.

OHIO SCHOOL BOARDS ASSOCIATION,
Westerville, Ohio, October 7, 1975.

Hon. CARL PERKINS,
Chairman, House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR MR. PERKINS: We have recently received a memorandum for Chief State School Officers from HEW regarding record keeping on student discipline procedures and actions. As you know, this HEW-OCR memorandum prescribes extremely onerous record keeping requirements for school districts of student disciplinary actions and procedures. I shall not recount the several provisions, as I am sure you are most familiar with them.

Needless to say, school districts throughout Ohio have expressed alarm and believe the burden imposed is totally unrealistic. If implemented, the requirements would severely limit the ability of a school district to administer fairly and uniformly its rules and regulations. Students personnel administration would be reduced to paper shuffling.

The OSBA certainly does not condone discrimination against students through the use of suspension and expulsion. Suspensions and expulsions after due process of law has been accorded are, and must remain, proper tools to be used by school personnel in appropriate circumstances. While we must continue to look for alternatives to these disciplinary procedures, they must be maintained until more effective methods are found.

Sincerely,

R. DEAN JOLLAY, Jr.,
Director of Legislative Services.

DAVIESS COUNTY PUBLIC SCHOOLS,
Owensboro, Ky., October 6, 1975.

Hon. CARL PERKINS,
Chairman, House Education and Labor Committee,
Rayburn House Office Building, Washington, D.C.

DEAR SIR: May I take this opportunity to comment concerning DHEW–OCR's need to institute record keeping requirements on student-discipline procedures and actions in school district with the following remarks:

1. This school district nor any other that I am aware of condones any attempt to discriminate against anyone through the use of suspension or expulsion.

2. Has it ever occurred to anyone that 49% of the suspensions and 43% of the expulsions coming from 38% of the population who happen to be minorities may have been justified?

3. If a conspiracy against minorities exists, why would as many as 51% of the suspensions and 57% of the expulsions be against the majority? If it were intentional, would not those percentages be less?

4. When will we ever learn that the American Public School as it is now structured and financed cannot be everything to everyone, nor can it totally take the place of the home, family, church, and law and order.

5. We are now watering down the programs of American Public Schools in order to help many of the minorities and the majority to the degree that we may be doing more harm than good in the long run. Why tell an individual he has a diploma when he lacks basic skills to hold a job.

6. The time and effort which public school administrators, teachers, and other personnel shall need to comply with these regulations will be taken from what little time we now have to help the minority and the majority.

7. Help!

Sincerely,

Dr. George C. Overstreet.

Monongalia County Schools,
Morgantown, W. Va., October 6, 1975.

Hon. Carl Perkins,
Chairman, House Education and Labor Committee,
Rayburn House Office Building, Washington, D.C.

Dear Congressman Perkins: I understand your committee on House and Labor will be holding a hearing on a directive of DHEW-OCR, stipulating the kind of documents school districts will be required to maintain concerning student discipline. I am writing to express my concern regarding the increasing amount of red tape which seemingly must be maintained to operate the public schools.

I am sure you are well aware of the budget crunch we are in. Our costs are escalating much more rapidly than our resources.

Over the past ten years, the Federal Government has approved a number of federally funded programs of categorical nature. For the most part, these have been beneficial; however, at the same time, there has been a great proliferation of red tape and record keeping to justify these funds.

I certainly believe that all children should be treated equally, regardless of their race, sex or ethnic orientation. I am convinced that the schools can do an acceptable job in working with these children without all the extensive records which are proposed by DHEW-OCR.

In these days of social unrest, it is mandatory that school officials have some leeway in authority in operating the public schools. The proposed regulations would seriously hamper our ability to operate the schools within the time and resources now available.

Your attention to this mater would be greatly appreciated.

Sincerely yours,

Lawrence G. Derthick, Jr.,
Superintendent.

The Willmar Public Schools,
Willmar, Minn., October 6, 1975.

Rep. Carl Perkins,
Chairman, House Education and Labor Committee,
Rayburn House Office Building, Washington, D.C.

Dear Mr. Perkins: I wish to strongly protest the DHEW memorandum of August 19, 1975 to Chief State School Officers requiring local school districts to keep records on discipline actions and a host of related items. Schools have neither the money, time, or personnel to follow the trivia suggested by DHEW.

The entire memorandum is utterly disgusting but very representative, I suppose, of the entrenched Bureaucracy in Washington, D.C. It has become so overhelming our daily lives are becoming structured around guidelines, rules and regulations, and memos from the state and Federal levels of government. That, I think, *is necessarily "bad."*

I hope you receive volumes of mail protesting this particular move from DHEW, and I also hope you are perceptive enough to expect people to protest—and do something about—the spreading Bureaucracy in his country that is really stifling.

Yours truly,

LOWELL MELBYE,
Superintendent.

DALLAS COUNTY BOARD OF EDUCATION,
Selma, Ala., October 6, 1975.

REP. CARL PERKINS,
Chairman, House Education and Labor Committee,
Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE: The Department of H.E.W. and Office of Civil Rights has on the basis of Title VI of the Civil Rights Act of 1964 and the Departmental Regulation (45 CFR Part 80 Section 80.6(b)) authorized record keeping requirements on student-discipline procedures and actions in school districts.

Our System does not condone discrimination against anyone; we, however, feel that unilateral development of reporting procedures is unrealistic in view of drastic limitations of budgets, etc.

Please use your influence to reduce red tape and bureaucratic directives. This is a good place to start and continue to work in its reduction. We do not have time with limited staff to work for instruction when we spend most of our time on reports to Washington on various and sundry matters of which local professionals have had no significant input.

Sincerely,

FRANK EARNEST, Jr.,
Superintendent.

EAST SYRACUSE-MINOA CENTRAL SCHOOLS,
East Syracuse, N.Y., October 6, 1975.

Hon. CARL PERKINS,
Chairman, House Educational Labor Committee,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN: Enclosed is a memorandum for Chief State School Officers regarding Record Keeping on Student-Discipline Procedures and Actions in School Districts as outlined by the Department of Health, Education, and Welfare's Office of Civil Rights.

Our school system does not condone or discriminate against anyone through the use of suspension from school. In fact, we have a detailed provision for due process; and many times the use of suspension is certainly a bona fide measure to maintain law and order, especially where one wants to consider the other 99% of our students who want to learn in a conducive educational environment. Moreover, the remedy proposed by the Office for Civil Rights is unwarranted, unrealistic, and completely out of line when one has to consider budgetary and personnel constraints. These kinds of Federal edicts are of no value to school systems who have a responsibility to all the children. We have, as in the past, treated all ethnic and socio-economic children alike and do not need another layer of bureaucratic record-keeping.

Your assistance in this matter, as always, is appreciated.

Sincerely,

FRITZ HESS,
Superintendent of Schools.

NORFOLK PUBLIC SCHOOLS,
Norfolk, Nebr., October 6, 1975.

Representative CARL PERKINS,
Rayburn House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE PERKINS: I have received a copy of a letter from the Department of Health, Education, and Welfare which was sent to all chief state school officers. This letter has an August, 1975 heading date. It's subject is "Record Keeping on Student-Discipline Procedures and Actions in School Districts". The letter was signed by Martin H. Gerry, Acting Director, Office for Civil Rights.

I am strongly supportive of the students' right of due process. I feel that we have been able to establish and maintain good discipline in our local school system. I am, however, extremely alarmed at the proposed regulations and paper work detailed in this communication. I not only resent this extension of authority on the part of HEW; I am appalled at their thoughtlessness and apparent ignorance in suggesting this kind of additional clerical work for those of us in the public schools. We hear suggestions constantly from the national, state, and local level that we should not get bogged down in paper work. The paper work required for each disciplinary action suggested in this report is unbelievable unless one has dealt with the many disciplinary problems which come about in the public schools from day to day. On the one hand we learn that according to public opinion polls the public considers discipline as the number one problem in the school, and on the other hand we get such a regulation as this proposed from HEW. This kind of clerical requirement would certainly lead many school districts to simply not take discipline action in many instances. There will be a further deterioration of discipline in the public schools.

I sincerely urge that you take firm and immediate action to oppose this new imposition of paper work and red tape on the public schools. This is a critical issue which will have far-reaching consequences unless you act immediately and vigorously to oppose the implementation of these regulations.

Thank you for your assistance in this matter.

Sincerely,

GENE LAVENDER,
Superintendent of Schools.

GRANDVIEW HEIGHTS HIGH SCHOOL,
Columbus, Ohio, October 7, 1975.

Representative CARL D. PERKINS,
Chairman of the Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR SIR: The intent of this letter is to strongly urge you to carefully consider the HEW Directive on Student Discipline. At the present rate the school teacher and the school administratory will not have the capacity to teach or administrate, if the federal and state governments continue to burden them with non-educational trivia! It is that simple.

Sincerely,

JOHN P. CARONIS,
Assistant Principal.

JOINT SCHOOL DISTRICT NO. 10,
Poynett, Wis., October 6, 1975.

Representative CARL PERKINS,
Chairman, House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE PERKINS: I was appalled recently when I received the enclosed memo that was sent by the Department of Health, Education, and Welfare to state officials regarding new record keeping procedures for student discipline that must be maintained by local school districts.

Local school districts have been bombarded in recent months with surveys and regulations regarding non-discrimination in dealing with students. While the rights of students must be protected, the cure (record keeping) and the insurmountable paperwork that is involved is worse than the problem. I strongly protest additional bureaucratic paperwork being imposed by H.E.W.

When will the legalistic jungle of paperwork ever be curbed by the federal government? Please take a stand against the avalanche!!!

Sincerely,

ELGIE L. NOBLE,
Superintendent of Schools.

HANOVER PUBLIC SCHOOLS,
Hanover, Mass., October 3, 1975.

Representative CARL PERKINS,
Chairman, House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE PERKINS: As president of the Massachusetts Association of School Superintendents, I write to you concerning a directive by Department of Health, Education, and Welfare, Office of Civil Rights, (DHEW-OCR) dealing with records to be kept on school discipline in every school. This directive is to have a hearing before your Committee on Labor and Education—October 9 1975.

The thrust of the directive seems to be to locate and correct abuses of discrimination against minorities since there is evidence that such groups of school children receive a disproportionate share of 'punishment' in school. No reasonable person condones such discrimination nor does he argue against the need for reasonable disciplinary procedures in schools to enable good education to be available to all students. However, I, and most school administrators, believe this is a type of bureaucratic overkill requiring every school in the nation to keep a second record requiring extensive clerical, administrative and teacher time which will have to be taken away from working with youngsters since there are no additional funds or personnel to produce the required forms.

I feel I am much more moderate in my thinking than most administrators in this state because we now keep good records, have few discipline problems and no minorities. It is ironic that in this state we have just removed every mention of minority status because of various federal and state regulations but now, in defiance of these directives, we would have to keep prominent the fact the person might be from some minority group. Racial problems do exist in some school districts so it might be better to require this directive in every school or district which has above a certain percent of minority children. Between state requirements on discrimination, on children with special needs, on the current reduction of state aid to education in Massachusetts because of state financial problems and the resultant budget proposals such federal directives become unnecessary harassment for most communities. I doubt if HEW would approve of keeping every student in a class after school to try to find one student who might have caused trouble yet this is what they seem to be doing. At the same time they are saying, we will make you do this, but don't expect us to pay for it. We need time to teach, to learn and to work with youngsters and their families. We can ill afford to drain away resources on clerical projects created by bureaucrats which must be funded at the local level.

Sincerely yours,

ROBERT P. FOX, *President,*
Massachusetts Association of School Superintendents.

DEXTER PUBLIC SCHOOLS,
Dexter, Mo., October 3, 1975.

Re Record Keeping on Student, Discipline Procedures, Title VI of the Civil Rights Act of 1964.

Representative CARL PERKINS,
Chairman, House Education and Labor Committee, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE PERKINS: It seems to me that the requirements under this Act pertaining to Student Discipline as established by DHEW-OCR are very unrealistic. Normally, schools do not have the staff capabilities to comply with such requirements and will have even less as the economic conditions of schools worsen.

I am in complete agreement that there should be no discrimination against anyone through the use of any disciplinary measures, but there has to be some form of discipline in the schools if we are to maintain any type of desirable learning conditions.

I hope that you will use your influence to reduce the rigid and impractical requirements of this regulation as handed by DHEW-OCR.

Respectfully,

T. S. HILL,
Superintendent of Schools.

AMERICAN FRIENDS SERVICE COMMITTEE,
Atlanta Ga., October 24, 1975.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor Subcommittee on Elementary, Secondary and Vocational Education, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. PERKINS: Enclosed is my statement on behalf of the American Friends Service Committee on the suspension of school children and the Office for Civil Rights' memorandum on disciplinary procedures.

Thank you for the opportunity to submit these comments on a matter which is of great concern to us.

Sincerely,

WINIFRED GREEN, *Director,*
Southeastern Public Education Program.

Enclosures.

PREPARED STATEMENT OF WINIFRED GREEN, DIRECTOR, SOUTHEASTERN PUBLIC EDUCATION PROGRAM, AMERICAN FRIENDS SERVICE COMMITTEE

Mr. Chairman, my name is Winifred Green, and I am director of the Southeastern Public Education Program of the American Friends Service Committee. I am pleased to respond to the Committee's request for written testimony on school suspensions and the Office for Civil Rights' August 1975 memorandum on procedures for suspensions.

I am submitting this statement on behalf of the American Friends Service Committee, and I speak for that body and many like-minded Friends. However, no single body can speak for the Religious Society of Friends.

The Southeastern Public Education Program was pleased to learn that the Office for Civil Rights was taking a step this fall that we had long advocated: requiring local school districts to maintain records on student discipline procedures and suspensions which would provide a basis for proving discrimination against minority students. In our intensive involvement with Southern communities desegregating for the first time, it has been overwhelmingly evident to us that black students were punished more frequently and more severely than white students for the same or similar offenses. Our concern was enhanced by the fact that the hostile atmosphere created in many Southern schools by white adults was conductive to student unrest, and that students caught in this atmosphere very often felt they had no recourse but to leave the school (a phenomenon of desegregation called the "pushout").

That these problems are widespread has been amply documented by the Office for Civil Rights and by private groups, including ourselves. Our staff in the South participated in the Children's Defense Fund's 1974 research released as Children out of School in America, which found that black secondary school students were suspended more than three times as often as white students. (Black females were suspended more than four times as often as white females.) Attached is a report of our South Carolina Community Relations Program compiled in January which shows that South Carolina school districts lost a total of $223,101 in state aid in the suspension of 46,268 students for 147,202 school days in 1973–74. This report found that 13 percent of the black students in the state were suspended at least once that year, eight percent of the whites. (These figures, taken from the Office for Civil Rights' Elementary and Secondary School Civil Rights Survey 101 and 102 forms, would be even more significant if broken down for secondary schools, where most suspensions occur.) (Attachment #1)

But let me stress that we are speaking not only from statistical data which we have collected but also from our personal involvement with parents and students. We have received numerous complaints of discrimination in suspension and expulsion, and our investigations have confirmed the numerical evidence that blacks are disproportionately and unjustly disciplined, that white students' offenses are more likely to be dismissed with a reprimand, and that black students often attend schools where suspension is but another notice from adults that they are not wanted.

Because of our constant contact with the very real human problems caused by unequal, self-defeating and educationally detrimental disciplinary procedures, we were pleased when the Office for Civil Rights released the memorandum to Chief State School Officers. We felt the required record-keeping would be useful not only to the Office for Civil Rights, but also to school officials themselves. Student suspension and expulsion are issues which all too frequently have not been dealt with rationally and systematically by school systems in the emotional throes of desegregation. We felt that once local school systems were required to compile and analyze information on the suspension of students, they would come to the conclusion that many civil rights groups and educators have—that alternative means of disciplining students need to be implemented so that children are not forced out of school for long periods of time, and that school systems need to examine the kind of climate adults have created which has led to large annual increases in the number of students they find it necessary to remove from school.

Thus, we were disappointed to hear reports that OCR was yielding under pressure from various groups, including some of those alleged to have practiced discriminatory suspensions, and that it was modifying its memorandum.

We strongly urge that the memorandum not be weakened. In the face of our findings, compiled from OCR's own records, that 147,202 student days were lost in South Carolina alone in 1973–74, we find delay hard to justify. Too many students are affected too seriously for the federal government to sit by idly while another year of increasing suspensions passes.

It is particularly important that the suspension memorandum be implemented this year because OCR has already given up the annual Elementary and Secondary School Civil Rights Survey in favor of biennial reporting. The rationale for this action was that OCR could use the alternate years to take a more comprehensive look at school districts' civil rights activities. The suspension memorandum, we feel, is an appropriate means of fulfilling that rationale.

We hope the memorandum will provide a step towards improving the 101 and 102 forms, now being revised. Additional data reported in the Survey should include a breakdown by sex of suspensions, figures by race and sex of referrals of students to special schools or classes (including vocational educational programs) for disciplinary reasons, and dropout figures by race and sex.

We recommend including figures broken down by sex becauses it has already come to our attention in monitoring Title IX that disciplinary policies are often different for the sexes. For example, while males may sometimes choose between corporal punishment and suspension, females often have no alternative to suspensions. As noted earlier, black females are suspended four times as often as white females.

We have used the 101 and 102 forms extensively since 1968 in our efforts to communicate the status of school desegregation to local communities, the media and the government. Districts consistently misreport or fail to report required data. In connection with the South Carolina school suspension report mentioned above and attached here, our staff provided OCR's Region IV Elementary and Secondary Education Branch a memo detailing significant errors in 25 per cent of that state's local suspension reports. The numerous and obvious errors we have found in reporting suggest to us that OCR has been lax in its demands for complete and accurate information. They also suggest that unless OCR requires not only maintaining but also submitting of the records on suspensions, that there will be substantial defaults in collecting of data.

As a result of the Freedom of Information Amendments of 1974, more and more individuals and agencies have become aware of their entitlement to federally collected information. We are beginning to discern a corresponding pressure on some federal agencies to discontinue collecting the information (or as one observer at the Office for Civil Rights remarked to one of our staff members, "Maybe they figure if we don't collect the information, you all can't get it"). Private organizations' use of these data have had a major impact on the public's understanding of the progress of school desegregation. (And regional officials of the Office for Civil Rights have on a number of occasions requested copies of our reports which were based on their data and have noted that they keep copies in their offices for reference. We are often months or years ahead of OCR in compiling statistics). In the face of OCR's recent claims that it is too under-staffed to respond to individual complaints, it is more than ever necessary that public citizens have access to information which would help them to evaluate their school districts.

I am enclosing a copy of a complaint which a community organization in Mullins, South Carolina, filed with OCR with the assistance of our staff and using data from their local school district's 101s and 102s. Access to this information at the federal level provided them information they would never have gotten from their own school board and enabled them to raise questions—such as why 34 per cent of the black students in one of their junior high schools had been suspended at least once, while 9 per cent of the whites were. (Attachment #2)

In addition to the attachment cited above, I am enclosing a copy of a letter I wrote July 2, 1975, to OCR Director Peter Holmes objecting to changes proposed in the Consolidated Procedural Rules for Administration and Enforcement of Certain Civil Rights Laws and Authorities. In that letter on behalf of the American Friends Service Committee, I requested that OCR not rescind the right of individual citizens to have their complains investigated. There, as in the statement, I tried to express the strong belief of those of us who have been involved in the struggle for desegregation for so many years that the time has not come to abandon the effort to attain good, integrated schools. Attachment #3)

The suspension data collection required in the Office for Civil Rights memorandum of August 1975 to Chief State School Officers is essential to the attainment of that goal.

YOUR SCHOOLS—SPECIAL REPORT, DECEMBER 1974–JANUARY 1975

SUSPENSIONS AMONG S.C. STUDENTS INCREASED IN 1973–1974

Elementary and secondary pupils in South Carolina missed 147,202 days of school during 1973–1974 because they were suspended for disciplinary reasons. More than $220,000 was lost by South Carolina school districts because these students were not in class, and because the State's school finance aid system is based on the average daily attendance of students in a school district.

These profound and shocking consequences of the continued widespread use of the "short-term suspension" as a disciplinary technique by South Carolina school districts are fully reported in this special issue of *Your Schools*.

Under South Carolina law school officials have the power to summarily suspend any student for disciplinary reasons for one to ten days without any type of due process. The free use of these "short-term suspensions" has grown to the serious dimensions reflected in the school districts' own suspension data reported for the 1973–1974 school year.

There was a significant increase in the number of short-term suspensions given to South Carolina students in 1973–1974 over the 1972–1973 year.

Whereas there were 39,491 such suspensions reported by South Carolina school districts for 1972–1973, the figure increased to 46,268 for 1973–1974.

Suspensions among both Black and white students increased. In 1972–1973, there were 21,670 suspensions among Black students and in 1973–1974 there were 25,361. Among white students the figure was 17,233 in 1972–1973 but increased to 20,855 for 1973–1974.

In many school districts a larger percentage of the Black enrollment was suspended than was the white enrollment. The percentage of the Black enrollment suspended ranged from highs of 27% in Anderson No. 2 (Honea Path), 23% in Lexington No. 2 (Brookland-Cayce), and 20% in Greenwood No. 50 (Greenwood), to lows of .63% in Orangeburg No. 6 (North) and 1% in Hampton No. 1 (Hampton).

These figures were taken from official forms commonly known as "101" and "102" forms which each school district in South Carolina must submit to the Office of Civil Rights of the U.S. Department of Health, Education, and Welfare each year. School superintendents and school principals who complete the forms must certify the statistical information which they provide on the forms "is true and correct to the best of my knowledge and belief." The forms state that "a willfully false statement is punishable by law."

Though the forms must be submitted by October 15 of each school year, when our staff examined them on January 8, 1975, three school districts in South Carolina had still not submitted the OCR forms: Allendale County School District, McCormick County School District, and the Saluda County School District. Therefore, the totals given above do not reflect suspensions in these districts and these districts are not included in the chart in this newsletter.

In a forthcoming issue of *Your Schools* we will report on what South Carolina school officials say they are doing to help reduce the number of short-term suspensions n their respective school districts.

1973–74 S. C. SUSPENSION STATISTICS BY DISTRICT

District and No.	Enrollment (1974)		Suspensions[1] 1 to 20 consecutive days		Suspension days lost		Percent of B/W[2] enrollment suspended		State aid lost due[3] to suspensions
	Black	White	Black	White	Black	White	Black	White	
Abbeville	2,000	[4]2,331 +1	128	86	398	238	6	4	$964.32
Aiken	7,407	15,817 +89	1,082	1,243 +8	5,257	4,603	15	8	14,949.85
Anderson 1	593	3,923 +5	51	132 +1	176	555 +3	9	3	1,112.65
Anderson 2	901	2,893	246	400	828	1,517	27	14	3,706.95
Anderson 3	646	1,815 +1	64	97	283	391	10	5	1,021.82
Anderson 4	777	1,612 +1	21	37	64	114	3	2	269.65
Anderson 5	2,926	9,156 +18	451	670	683	875	15	7	2,513.40
Bamberg 1	1,320	888	56	17	128	37	4	2	249.78
Bamberg 2	1,400	246 +2	97	18	294	60	7	7	536.46
Barnwell 19	821	515 +1	42	30	135	87	5	6	336.35
Barnwell 29	571	520	33	21	155	78	6	4	352.67
Barnwell 45	879	1,315 +2	84	108	208	237	10	8	674.12
Beaufort	5,659	4,101 +42	441	339	1,508	1,086	8	8	3,932.60
Berkeley	6,987	12,439 +325	418	522	1,074	1,065	6	4	3,242.87
Calhoun	2,213	254	60	11	221	26	3	4	373.96
Charleston	26,316	26,193 +486	3,568	2,456 +20	9,247	7,291 +42	14	9	25,139.00
Cherokee	2,420	6,249 +8	392	532	2,596	3,116	16	9	8,660.67
Chester	3,922	3,608 +4	488	264	1,447	671	12	7	3,210.94
Chesterfield	3,690	5,373 +1	258	257	993	875	7	5	2,832.01
Clarendon 1	1,959	6	33	0	145	0	2		219.27
Clarendon 2	2,481	755	117	37	351	108	4	5	695.41
Clarendon 3	690	555	51	47	199	90	7	8	437.82
Colleton [5]	4,306	2,493 +4	545	290			13	12	
Darlington	6,986	6,300 +2	397	240	1,406	854	6	4	3,426.66
Dillon 1	755	561 +10	29	23	87	69	4	4	236.30
Dillon 2	2,409	2,239 +107	251	90	687	301	10	4	1,497.97
Dillon 3	1,003	909	58	4[illegible]	118	94	6	5	320.74
Dorchester 1	1,236	451	37	16	143	51	3	4	293.77
Dorchester 2	1,635	5,162 +68	204	301	796	1,582	12	5	2,398.45
Dorchester 3 [6]	960								
Edgefield	2,601	[illegible]59	342	70	1,407	231	13	7	2,483.60
Fairfield [7]	3,723	[illegible]078	362	125			10	12	
Florence 1	6,030	8,447 +9	801	564	2,531	1,565	13	7	6,210.42
Florence 2	764	774	61	27	291	92	8	3	580.45
Florence 3	3,008	1,987	204	101	600	288	7	5	1,346.11
Florence 4	1,294	303	193	34	410	65	15	11	719.53
Florence	390	939	39	20	106	54	10	2	241.97
Georgetown	5,585	3,742 +16	392	142	1,217	423	7	4	2,486.44

1973-74 S. C. SUSPENSION STATISTICS BY DISTRICT—Continued

District and No.	Enrollment (1974)			Suspensions [1] 1 to 20 consecutive days			Suspension days lost			Percent of B/W [2] enrollment suspended		State aid lost due [3] to suspensions
	Black		White	Black		White	Black		White	Black	White	
Greenville	13, 354	43, 303	+107	2, 161	2, 518	+3	6, 142	6, 690	+14	16	6	$19, 477. 10
Greenwood 50	3, 578	6, 275	+16	716	454	+1	3, 262	2, 032	+3	20	7	80, 031. 25
Greenwood 51	293	1, 001	--------	32	27	------	113	100	------	11	3	322. 87
Greenwood 52	520	991	+1	65	56	------	336	298	------	13	6	960. 80
Hampton 1	1, 326	1, 265	--------	19	15	------	65	57	------	1	1	184. 50
Hampton 2	1, 390	263	--------	29	7	------	116	24	------	2	3	212. 17
Horry	6, 932	13, 384	+29	417	552	------	1, 054	5[illegible]	------	6	4	2, 988. 13
Jasper	2, 458	665	+1	136	58	------	205	112	------	6	9	480. 40
Kershaw	3, 600	5, 367	--------	209	165	------	721	499	------	6	3	1, 849. 22
Lancaster	3, 390	8, 200	+4	309	446	------	817	1, 397	------	9	5	3, 356. 41
Laurens 55	2, 275	3, 289	--------	157	131	------	635	474	------	7	4	1, 681. 04
Laurens 56	1, 480	2, 384	--------	132	108	------	402	348	------	9	5	1, 136. 78
Lee	3, 741	639	--------	101	30	------	295	73	------	3	5	557. 75
Lexington 1	565	5, 977	+9	91	253	------	757	1, 405	------	16	4	3, 277. 64
Lexington 2	1, 267	10, 328	+29	297	387	------	765	1, 184	------	23	4	2, 954. 77
Lexington 3	994	1, 660	+4	99	34	------	1, 349	507	------	10	2	2, 813. 56
Lexington 4	487	950	+3	10	19	------	39	68	------	2	2	161. 79
Lexington 5	575	6, 760	+22	96	250	------	407	773	------	17	4	1, 788. 90
Marion 1	1, 8[illegible]	1, 421	--------	245	66	------	782	202	------	13	5	1, 491. 58
Marion 2	1, 886	1, 171	+2	71	20	------	304	86	------	4	2	591. 10
Marion 3	835	123	--------	43	10	------	159	35	------	5	8	293. 77
Marion 4	366	157	--------	11	4	------	33	12	------	3	3	68. 12
Marlboro	4, 211	3, 337	+29	441	243	+1	2, 052	905	------	10	7	4, 483. 25
Newberry	3, 065	3, 627	--------	142	44	------	708	176	------	5	1	1, 279. 41
Oconee	1, 134	8, 696	+20	100	416	------	377	1, 451	------	9	5	2, 770. 99
Orangeburg 1	868	472	+1	40	21	------	127	63	------	5	4	287. 39
Orangeburg 2	1, 026	139	--------	59	5	------	340	35	------	6	4	568. 39
Orangeburg 3	3, 628	687	+1	49	20	------	73	26	------	1	3	149. 73
Orangeburg 4	843	772	--------	47	39	------	87	71	------	6	5	239. 14
Orangeburg 5	4, 608	1, 772	+2	344	163	------	733	362	------	7	9	1, 659. 75
Orangeburg 6	800	550	--------	5	2	------	12	5	------	.63	.36	25. 55
Orangeburg 7	1, 014	151	--------	55	9	------	185	33	------	5	6	329. 96
Orangeburg 8	332	249	--------	8	6	------	26	36	------	2	2	93. 67
Pickens	1, 477	12, 257	+40	150	668	+1	610	2, 107	------	10	5	4, 119. 23
Richlac 1 [4]	20, 327	13, 149	+82	2, 836	961	------	10, 022	2, 935	------	14	7	19, 645. 28

Richland 2	1, 861	8, 052	+276	240	408	+11	777	1, 369	......	13	5	3, 253. 52
Spartanburg 1	805	3, 398	+6	110	199	+3	441	513	+6	14	6	1, 464. 61
Spartanburg 2	918	5, 244	+4	32	76	......	179	355	......	3	1	809. 65
Spartanburg 3	735	2, 661	....	62	92	......	265	367	......	8	3	957. 96
Spartanburg 4	714	1, 946	+3	31	65	......	122	251	......	4	3	565. 55
Spartanburg 5	1, 162	3, 143	....	122	151	......	185	216	......	10	5	607. 42
Spartanburg 6	1, 157	6, 257	....	51	144	......	163	467	......	4	2	955. 12
Spartanburg 7	4, 846	7, 055	....	463	309	......	1, 932	1, 408	......	10	4	5, 063. 71
Sumter 2	6, 072	4, 026	+96	447	298	+1	1, 948	1, 452	......	7	7	5, 154. 53
Sumter 17	5, 466	4, 901	+19	267	177	......	764	506	......	5	4	1, 925. 14
Union	2, 726	4, 192	+7	452	320	......	1, 123	846	......	17	8	2, 985. 29
Williamsburg	7, 412	1, 780	....	310	82	......	974	223	......	4	5	1, 830. 06
York 1	1, 390	2, 381	+2	112	145	......	592	510	......	8	6	1, 670. 40
York 2	771	2, 094	+5	105	109	......	319	327	......	14	5	979. 25
York 3	4, 053	8, 321	+54	694	479	+2	2, 336	1, 347	+8	17	6	5, 595. 91
York 4	334	2, 188	+1	45	167	......	199	644	......	13	8	1, 277. 99
Total	256, 214	367, 439	+2, 128	25, 361	20, 855	+52	82, 818	64, 302	+82			223, 101. 80

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[1] Suspension Column.—It is unclear on the OCR forms whether the numbers provided by the various school districts represent the number of pupils suspended or the number of suspensions. The OCR forms ask for the "number of pupils suspended for at least 1 day, but not more than 20 consecutive school days during the previous school year." However in some school districts the numbers provided are so high it must be assumed they represent the number of cases of suspension, not the number of pupils. Some of the students are known to receive multiple suspensions during the school year, but it is not clear whether such students are counted only once—regardless of the number of times those students are suspended—or whether each individual suspension is recorded separately.

[2] Percent Enrollment Suspended Column.—It should be noted that percentages given in this column may be an inaccurately low indication, since they are based on total B/W student enrollment, while the great majority of suspensions and expulsions occur at the junior high level.

OCR forms require each school district and each school to list enrollment by race as of October 15, 1974. But they require suspension data to be listed by race for "the previous school year" (1973-74). Black/white percent of total B/W enrollment is calculated by: B/W total number of suspensions in district 1973-74 divided by the B/W total enrollment in the district as of 1974.

These percentages are not, therefore, absolutely accurate. However, for most school districts the inaccuracy is only a matter of 1 percent or 2 percent because the enrollment has not decreased significantly from 1973-74. If there was a significant increase or decrease in a district's student enrollment by October, 1974 the percentages will be significantly out of line and citizens should secure 1973-74 enrollment data, by race, to make correct calculations.

[3] State Aid Lost Due to Short-Term Suspensions Column.—The figures in this column are accurate only if it can be assumed every student who was suspended would have otherwise been present at school. Because many students who are suspended have poor attendance records anyway, such an assumption cannot be made. However, we believe these figures present dramatic and graphic evidence of the negative financial impact which widespread suspensions have on school districts in South Carolina.

Calculations indicating the number of dollars lost to each school district due to the short-term suspensions, 1 to 20 consecutive days, is calculated by the following formula:

(a) — suspension days lost divided by 180 days = the equivalent of — students.

(b) State aid P/T (pupil/teacher) ratio is 26 to 1 therefore, — students divided by 26 = is equivalent of — teachers.

(c) — teachers multiplied by $7,096 average State aid per teacher = — dollars of State aid.

[4] All + figures indicate minority groups such as American Indian, Asian Americans and Spanish Surnamed Americans.

[5] Colleton County School District's total number of suspension days and the total state aid that was lost as a result of the number of suspension days could not be calculated because Walterboro Senior High School failed to write in the suspension days lost on their OCR 102 form. Since their number of suspensions represent 27 percent of the district's suspensions it will significantly effect the total suspension days lost.

[6] Dorchester County School District No. 3 wrote in the word "unknown" for the number of suspensions. Therefore, the number of suspensions, suspension days lost, percent of enrollment suspended and the state aid lost to the district could not be indicated.

[7] Fairfield Junior High failed to give the number of suspension days for their suspended students so the state aid lost to Fairfield County School District could not be calculated.

[8] Richland County School District No. 1.—The date provided by Richland No. 1 is at variance with the data given by the school district's staff to its school board at the end of the 1973-74 year. Those figures showed that 5,116 black students, and 1,234 white students had received suspensions ranging from 1 to 5 days during the 1973-74 school year for total of 17,410 days lost because of such short-term suspensions. Using this data the total State aid lost was $26,255.

OPERATION H-E-L-P,
Mullins, S.C., February 24, 1975.

Mr. LAMAR CLEMENTS,
Chief, Elementary and Secondary Education Branch, Office for Civil Rights, U.S. Department of Health, Education, and Welfare, Region IV, Atlanta, Ga.

DEAR MR. CLEMENTS: In reviewing some of the OCR 101 and 102 Forms which we acquired from AFSC South Carolina Community Relation Program, we have noticed something which is very unusual and we believe deserve some attention from your office.

At Marion Grammar School which has an enrollment of 305 black students and 244 white students, grades 1 thru 6; 42% (130 students) of the black enrollment is in "programs for the emotionally disturbed, socially maladjusted, underachievers and/or slow learners." (1974–1975 data.)

At Spring Branch (Special Education School) which has an enrollment of 83 black students and 12 white students; 20% (16 students) of the black enrollment was "suspended for at least one day, but not more than 20 consecutive school days during the previous school year (1973–1974). No white students were suspended.

At Marion High School which has an enrollment of 289 black students and 173 white students, grades 11 thru 12; a total of 67% (196 students) of the black enrollment is in "programs for the EMR" (50 students) and "programs for the emotionally disturbed, socially maladjusted, underachievers and/or slow learners," (146 students), (1974–1975 data.)

At Southside School which has an enrollment of 313 black students and 246 white students, grades 7 thru 8; a total of 91% (284 students) of the black enrollment are in "programs for the EMR" (59 students) and "programs for the emotionally disturbed, socially maladjusted, underachievers and/or slow learners," (225 students). (1974–1975 data.) Thirty-four percent (34%) (106 students) of the black enrollment was "suspended for at least one day, but not more than 20 consecutive school days during the previous school year (1973–1974)." Nine percent (9%) of the white enrollment was suspended during the same period.

At Gilesboro Elementary School which has an enrollment of 224 black students and 134 white students, grades 1 thru 6; 37% (83 students) of the black enrollment are in "programs for the emotionally disturbed, socially maladjusted, underachievers, and/or slow learners." (1974–1975 data.)

At Johnakin Campus which has an enrollment of 328 black students and 209 white students, grades 9 thru 10; a total of 87% (286 students) of the black enrollment are in "programs for the EMR" (35 students) and "programs for the emotionally disturbed, socially maladjusted, underachievers and/or slow learners," (251 students). (1974–1975 data.)

In Marion School District #1 as a whole there are 1,884 black students enrolled and 1,421 white students enrolled. A total of 61% (1,142 students) of the black enrollment are "in programs for the EMR" (222 students) and "programs for the emotionally disturbed, socially maladjusted, underachievers and/or slow learners," (920 students).

We do not understand why such a large number of black students (1,142) are listed as being enrolled in programs for emotionally disturbed, socially maladjusted, underachievers and/or slow learners. Even for Marion County this large number is very disturbing to us.

We are also concerned with the high number of black suspensions in Marion School District #1 and we feel it is racially motivated. We feel there are many all black classrooms at most of the schools in the District. Our investigation shows that there has been a 12% decrease in the number of black teachers in Marion #1 since 1969. We have attempted on several occasions to meet with the Superintendent and Board of Trustees on these matters but to no avail.

We would like for your office to look into these matters to satisfy itself that the school district is using appropriate procedures of identification, placement and classification of handicapped, problem and underachieving students. Are such procedures consistent with state guidelines as well as those of your office? Are the high number of black suspensions racially motivated? Is the decrease in the number of black teachers racially motivated?

Thank you for your courtesy and cooperation. Please answer this complaint no later than forty-five days after you receive it and keep me advised every twenty-one days thereafter, as to the status of your investigation and to the action taken.

Yours truly,

REV. FRANKLIN REAVES,
President, Operation H–E–L–P.

AMERICAN FRIENDS SERVICE COMMITTEE,
Atlanta, Ga., July 2, 1975.

Mr. PETER HOLMES,
Director, Office for Civil Rights, Department of Health, Education and Welfare, Washington, D.C.

DEAR MR. HOLMES: The Southeastern Public Education Program of the American Friends Service Committee strongly objects to and opposes the Consolidated Procedural Rules for Administration and Enforcement of Certain Civil Rights Laws and Authorities (45 CFR Part 81) published in the Federal Register June 4, 1975.

For the past ten years we have worked towards the goal of equal educational opportunity and have consistently urged the Federal Government to enforce the law. In 1965 in a memorandum to Secretary John W. Gardner concerning the implementation of Title VI of the Civil Rights Act of 1964, we said: "What is needed first is a philosophy behind the compliance program which will reflect an awareness that we will be confronted with racial discrimination in education for some time but probably in varying and more subtle and sophisticated forms. The compliance machinery should be a realistic implementation of that concept. It should be geared for a difficult and long haul."

The events of the past ten years clearly demonstrate that we were correct in this statement. We are writing you today to urge that you not revise your compliance program in the manner proposed. The change denies a vital tool to concerned citizens and community groups that are actively working to assure that their school systems operate in a manner consistent with Title VI and other laws and regulations. We urge the Office for Civil Rights to perform its duties in a comprehensive manner that includes the right of an individual citizen to file a complaint and have that complaint investigated promptly.

Secretary Weinberger states: "The need for clarification of departmental roles is derived from several sources: first . . . the workload for the Office for Civil Rights has increased appreciably over the years."

This is the first time we have heard HEW say that its resources were not adequate to comply with its legal duties. Your testimony this spring before the House Subcommittee on Appropriations did not suggest that you required additional resources for elementary and secondary school civil rights enforcement.

We agree with the plaintiffs in *Adams vs. Weinberger* that: "Defendants' good faith is further questioned by their reference to a proposed Regulation published on June 4, 1975, *the same day they filed the instant motion,* and by their candid admission that if the proposed Regulation becomes final, "any complaints covered by this Court's order which are outstanding at this time . . . would, of course, be processed under such new regulations." The proposed Regulation gives defendants complete discretion not to investigate or resolve complaints of discrimination (45 CFR S81.6) (40 Fed. Reg. 24148, 24152). In other words, since under this Regulation which defendants propose to make effective in 45 days HEW is authorized not to investigate complaints, the intended effect of three to six-month extensions would be to enable HEW never to investigate the 176 unresolved complaints pending on March 14."

On May 16, we wrote to you objecting to the Office for Civil Rights' apparent intention to suspend its annual Elementary and Secondary School Civil Rights Survey. We have received no response. Section 81.4 of the new regulation requiring a three-year retention of certain school system data is not adequate if it is intended as a substitute for annual reporting to the Federal Government. It is particularly inadequate in face of your proposal to review districts only "periodically." We contend that without an annual analysis of the 101s and 102s, the Department cannot review effectively the practices of local school systems.

In a statewide analysis of the Fall 1974 101s and 102s in South Carolina, the AFSC found repeated school district errors in compilation and reporting. Without annual inspecition, school officials will feel even more free to misreport or to fail to report compliance information; and nothing in our experience with the Office for Civil Rights indicates that the legal remedies specified in the regulation will be exercised against those who violate the law.

We strongly urge the Department to make its intentions regarding annual civil rights compliance reporting clear to the public now while the proposed regulations are pending comment.

From our long experience in elementary and secondary school desegregation, we are certain that other changes in the proposed regulation will undermine the full enforcement of civil rights laws. These changes include: The elimination of notification of complainants on the findings of compliance reviews (Paragraph 81.7 (b) and Section 81.8 in the new regulation); The allowance of 30 additional days for school officials to dispute the noncompliance findings of the Office for Civil Rights (paragraph 81.9 (b)); The elimination in Section 81.14 of the right of *amicus curiae* to request the administrative law judge to ask witnesses specific questions, and The omission of government reimbursements for witnesses' travel expenses to the site of administrative hearings.

The first, third and fourth of the cited changes would further severely restrict the input into the compliance process of those people who care the most about equal educational opportunity and who have sacrificed the most to effect it: parents, students and private citizens.

If the proposed regulations replace those now in effect for Title VI (45 CFR Part 80.6–80.11 and Part 81) the government will be making even more difficult the task of citizens who are concerned with making the promise of equality a reality.

This letter is not meant to imply that the present regulations and compliance efforts of the Office for Civil Rights are totally adequate to perform its legal duties. It is meant as the most serious of objections to an action that can only serve to weaken your compliance efforts and to further raise doubts about your commitment to equal educational opportunity.

Sincerely,

WINIFRED GREEN, *Director,*
Southeastern Public Education Program.

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